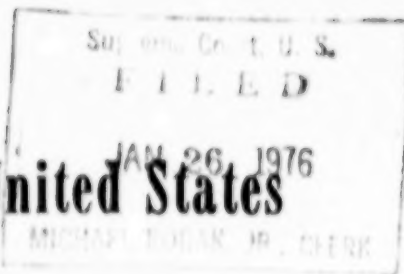


IN THE  
**Supreme Court of the United States**



October Term, 1975

No. **75-1052**

L. T. WALLACE as Director of Food and Agriculture of the  
State of California and M. H. BECKER as Director of the  
County of Los Angeles, California, Department of Weights  
and Measures,

*Petitioners,*

vs.

THE RATH PACKING COMPANY, a corporation,

*Respondent.*

**Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit**

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L. T. WALLACE as Director of Food and Agriculture of the  
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County of Los Angeles, California, Department of Weights  
and Measures,

*Petitioners,*

vs.

THE RATH PACKING COMPANY, a corporation,

*Respondent.*

**Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit**

Petitioners L. T. Wallace as Director of Food and  
Agriculture of the State of California,<sup>1</sup> and M. H.  
Becker as Director of the County of Los Angeles,  
California, Department of Weights and Measures, pray  
that a writ of certiorari issue to review the opinion  
and judgment of the United States Court of Appeals  
for the Ninth Circuit entered in this proceeding on  
October 29, 1975.

The States, organizations, and law enforcement of-  
ficers listed in footnote 2 have authorized petitioners

<sup>1</sup>Dr. Wallace was appointed to succeed C. B. Christensen  
as Director during the pendency of this matter in the Court  
of Appeals.



to advise the Court that they support the granting of certiorari.<sup>2</sup>

<sup>2</sup>The following jurisdictions and organizations support the granting of certiorari in this case.

**States:**

Bruce E. Babbitt, Attorney General of **Arizona**; Carl R. Ajello, Attorney General of **Connecticut**; the State of **Hawaii**, John Farias, Jr., as Chairman of the Board of Agriculture, George Mattimoe, Deputy Director; the State of **Louisiana**, Department of Justice, William J. Guste, Jr., Attorney General; the Commonwealth of **Massachusetts**, Francis X. Bellotti, Attorney General; Robert Woodahl, Attorney General of **Montana**; Paul L. Douglas, Attorney General of **Nebraska**; Robert List, Attorney General of **Nevada**; Louis J. Lefkowitz, Attorney General of **New York**; the State of **Oregon**; the Commonwealth of **Pennsylvania**, Department of Agriculture, Raymond J. Kerstettler, Acting Secretary; William J. Janklow, Attorney General of **South Dakota**; **Washington** State Department of Agriculture, by Slade Gordon, Attorney General.

**Organizations:**

Associated Dairymen; Associated Milk Producers, Inc.; California Cattlemen's Association; California Citizen Action Group; California Farm Bureau Federation; Consolidated Milk Producers for San Francisco; Consolidated Milk Producers of Tulare County; Consumers Cooperative of Berkeley, Inc.; Federated Dairymen; Mid-America Dairymen, Inc.; League of California Milk Producers; Milk Producers Council; National Association of Retail Grocers of the U.S. Inc.; National Consumers Congress; Producers' Market Milk Association; Scale Manufacturers Association, Inc.; Western Dairyman's Association.

**Other California Law Enforcement Officers:**

D. Lowell Jensen, District Attorney, Alameda County; Thomas L. Kelly, District Attorney, Alpine County; Guy E. Reynolds, District Attorney, Amador County; Kenneth H. Leach, District Attorney, Butte County; Joseph W. Kiley, District Attorney, Calaveras County; Robert W. Weir, District Attorney, Del Norte; Terrence M. Finney, District Attorney, El Dorado County; Noble Sprunger, County Counsel, El Dorado County; William A. Smith, District Attorney, Fresno County; L. H. Gibbons, District Attorney, Inyo County; Ralph B. Jordan, County Counsel, Kern County; Albert M. Leddy, District Attorney, Kern County; Harold L. Abbott, District Attorney, Lassen County; John K. Van de Kamp, District Attorney, Los Angeles County; Bruce Bales, District Attorney, Marin County; Douglas J. Maloney, County Counsel, Marin County; Duncan M.

**Opinion Below**

The opinion of the Court of Appeals, not yet reported, appears at Appendix A, *infra*, pp. 1-47. The opinion of the District Court for the Central District of California is reported at 357 Fed. Supp. 529, and appears at Appendix A, *infra*, pp. 47-58.

**Jurisdiction**

The judgment of the Court of Appeals for the Ninth Circuit was entered on October 29, 1975. See Appendix A, *infra*, p. 1. This petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. section 1254(1).

James, District Attorney, Mendocino County; Russell M. Koch, County Counsel, Merced County; John P. Baker, District Attorney, Modoc County; James D. Boitano, District Attorney, Napa County; Ronald L. MacMiller, District Attorney, Nevada County; Cecil Hicks, District Attorney, Orange County; Gerald E. Flanagan, District Attorney, Plumas County; Byron C. Morton, District Attorney, Riverside County; John M. Price, District Attorney, Sacramento County; Edwin L. Miller, Jr., District Attorney, San Diego County; Joseph Freitas, District Attorney, City and County of San Francisco; Joseph H. Baker, District Attorney, San Joaquin County; Robert N. Tait, District Attorney, San Luis Obispo County; Keith C. Sorensen, District Attorney, San Mateo County; James M. Cramer, District Attorney, San Bernardino County; Stanley M. Roden, District Attorney, Santa Barbara County; Louis P. Bergna, District Attorney, Santa Clara County; Christopher C. Cottle, District Attorney, Santa Cruz County; Shasta County, Robert A. Rehberg, County Counsel; Robert W. Baker, District Attorney, Shasta County; Gene L. Tunney, District Attorney, Sonoma County; Donald N. Stahl, District Attorney, Stanislaus County; Edward F. Buckner, County Counsel, Sutter County; H. Ted Hansen, District Attorney, Sutter County; Henry J. Goff, Jr., District Attorney, Tehama County; Calvin E. Baldwin, County Counsel, Tulare County; J. W. Powell, District Attorney, Tulare County; Stephen Dietrich Jr., County Counsel, Tuolumne County; C. Stanley Trom, District Attorney, Ventura County; Bartley C. Williams, District Attorney, Yuba County.

### Questions Presented

1. Whether the Court of Appeals erred in holding that California may not exercise its police power to assure the California public and competitors that packaged meat products bear accurate statements of weight, which holding is contrary to principles affirmed by the Second Circuit in *General Mills, Inc. v. Furness*, 508 F. 2d 836 (1975).

2. Whether the Court of Appeals erred in reversing the District Court's determination that a United States Department of Agriculture regulation which purports, without specifying any limits, to permit "reasonable variations" from label statements of weight on packaged meat products was void for vagueness.

3. Whether the Court of Appeals erred in holding that the District Court had jurisdiction to review Rath's defenses to prior-filed state court actions after the District Court had remanded the state court actions.

4. Whether the Court of Appeals erred in affirming issuance of an injunction requested by respondent when there was substantial evidence of Rath's violations of law and unclean hands.

### Constitutional and Statutory Provisions Involved

The case involves Article VI, clause 2 of, and Amendment X to, the United States Constitution; the Wholesome Meat Act, 81 Stat. 584 *et seq.*, 21 U.S.C. section 601 *et seq.*; 9 Code of Federal Regulations section 317.2(h)(2); and California Business and Professions Code section 12211; California Stats. 1963, ch. 353; which are reprinted in pertinent part in Appendix B, *infra*, pp. 59-69, and Title 4, Calif. Admin. Code, ch. 8, subch. 2, Art. 5, section 2930 *et seq.*, which is set out as Appendix D, *infra*, pp. 97-113.

### Statement Pursuant to Rule 33(2)(b)

Since this proceeding draws into question the constitutionality of the Act of March 4, 1907, as amended 81 Stat. 584, 21 U.S.C. sections 601 *et seq.*, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. section 2403 may be applicable.

No court of the United States as defined by 28 U.S.C. section 451 has, pursuant to 28 U.S.C. section 2403, certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question.

### Statement of the Case

In the trial court respondent claimed that jurisdiction was conferred by 28 U.S.C. section 1331(a) as it alleged that a case or controversy arising under the laws of the United States involving more than \$10,000 was presented. For reasons set out *infra*, petitioners contest the assumption of jurisdiction by the trial court.

To assure California consumers, wholesalers and retailers that the packages they purchase contain the quantity stated on the label, and to protect markets for producers, petitioners and their predecessors, California weights and measures officials, have, pursuant to state law (Cal. Bus. & Prof. Code § 12211 and 4 Cal. Admin. Code § 2930 *et seq.* (Article 5)) and for more than 15 years, inspected products of all manufacturers and packers, applying the same accurate-weight-on-the-average standard regardless of the origin of the commodity inspected.



In the course of enforcing these truth-in-packaging laws during the period April 1971 through March 1972, petitioner Becker inspected lots of bacon packaged by respondent The Rath Packing Company (Rath) when offered for retail sale. These packages carry a representation by Rath of the weight of the contents (e.g., Net Weight 16 oz. (1 lb.)). After determining that lots of Rath bacon bore false statements of weight, petitioner Becker ordered them off sale.<sup>3</sup> More than 100 lots of Rath bacon were ordered off sale. Conferences were had with Rath representatives at which they were advised that Rath must deliver to the purchasers the net weight represented on the package.

As a result of Rath's failure to meet this standard, on February 17, 1972, the Riverside County, California, District Attorney filed a civil action against Rath in Riverside County Superior Court, for violation of California false advertising and unfair competition statutes. On March 1, 1972, the Los Angeles County, California, District Attorney filed a similar action in Los Angeles County Superior Court.<sup>4</sup> Rath removed each of these cases to United States District Court and filed answers and counter-claims in that court.

<sup>3</sup>Both the District Court and the Court of Appeals acknowledged the statistical validity of the California testing procedure (Article 5), Appendix A, *infra*, at 8 and 52. Utilizing Article 5 there is but one chance in one thousand that the determination that a lot is short weight is not correct.

<sup>4</sup>The texts of the statutes upon which these complaints are based (Cal. Bus. & Prof. Code § 17500 and Cal. Civ. Code § 3369) are set out in Appendix B, *infra*, pp. 69-71.

Each California Superior Court action alleged that statements of weight placed by Rath upon its packaged bacon were untrue as in fact packages were short weight when inspected at the retail level. In its answers filed in the removal proceedings, Rath asserted as a defense to the California Superior Court actions, federal preemption. By counterclaim, Rath sought declaratory and injunctive relief alleging preemption of California's weights and measures laws by the federal Wholesome Meat Act.

On March 20, 1972, the District Court entered orders remanding each action to its original California court, finding at least with respect to the Riverside action that there was no diversity of citizenship and "[n]o substantial federal question is presented on the face of the pleadings."

Meanwhile, on March 17, 1972, Rath filed the action in the District Court which petitioners now seek to have this court review.

In each new District Court action, Rath complained for declaratory and injunctive relief based upon allegations that certain state statutes were preempted by the Wholesome Meat Act. Rath's District Court complaints raised identical issues to those set out in its answers and counterclaim filed upon removal of the state court actions and to those made in its answers and cross-complaints in the state court complaints. *The state statutes which Rath challenged by its action in District Court are the very ones under which the Los*



*Angeles and Riverside County District Attorneys had brought suit against Rath.*

On November 27, 1972, the District Court denied Christensen and Becker's motion to dismiss the action below for want of jurisdiction. Petitioners then sought review of this decision in the Ninth Circuit. The Court of Appeals declined to disturb the District Court's assumption of jurisdiction.

On April 3, 1973, the trial court entered its Memorandum Opinion and Order (Appendix A, *infra*, pp. 48-57). That decision held, in part, that California Business and Professions Code section 12211 and Title 4, California Administrative Code, chapter 8, subdivision 2, Article 5, are preempted by federal law, and enjoined their enforcement. The District Court also held that 9 C.F.R. section 317.2(h)(2) was void for vagueness.

The Court of Appeals affirmed the preemption holding and reinstated the federal regulation.

## REASONS FOR GRANTING THE WRIT

### 1. **The Decision of the Court of Appeals Deprives California of Its Sovereign Authority to Protect the Health and Welfare of Its Citizens, Conflicts With the Principles Enunciated in Prior Decisions of This Court, and Is Contrary to Principles Affirmed by the Second Circuit in *General Mills, Inc. v. Furness***

#### A. **The Decision Below Deprives California of Its Sovereign Police Power**

As this court said almost 80 years ago:

"Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the State to intervene. Laws providing for the inspection and grading of flour, the inspection and regulation of weights and measures, the weighing of coal on public scales, and the like, are all competent exercises of that power. . . ." *Patapsco Guano Co. v. North Carolina*, 171 U.S. 345, 358 (1897).

And as more recently stated in *Florida Lime and Avocado Growers v. Paul*, 373 U.S. 132, 144 (1962):

"[T]he supervision of the readying of foodstuffs for market has always been deemed a matter of peculiarly local concern. . . . [T]he States have always possessed a legitimate interest in the protection of . . . [their] people against fraud and deception in the sale of food products at retail markets within their borders."

In the face of this Court's repeated affirmation of the right of the States to assure their citizens

of truth and wholesomeness in the marketplace, the Court below held that California laws, designed to prevent fraud in the marketplace by requiring that label weight statements be accurate when the product is purchased (Cal. Bus. & Prof. Code § 12211 and Article 5), offend Article VI, section 2, the supremacy clause, of our federal Constitution when viewed against 21 U.S.C. section 678. See *Armour v. Ball* (6th Cir. 1972) 468 F. 2d 76; *cert. den.* 411 U.S. 981.

However, no article or clause of our federal Constitution relinquishes the police power of the States. And the Tenth Amendment specifically reserves to the States all powers not delegated to the United States by the Constitution, nor prohibited by it to the States.

Thus, in order for the Court below to conclude that California laws were preempted by section 678 of the Wholesome Meat Act, it must necessarily have concluded that the States had, by Constitution, yielded the necessary authority to the federal government.

Yet, nowhere in our Constitution is this power expressly or impliedly relinquished, and in light of *Patapsco Guano, supra*, and *Florida Lime and Avocado Growers, supra*, petitioners urge that this Court has specifically affirmed the police power of the States in this field and that the Court below erred.

**B. The Court Below Erred in Finding (1) an Intent by Congress to Preempt State Standards and (2) That California Had Exceeded the Scope of Its "Concurrent Jurisdiction" to Enforce the Wholesome Meat Act**

Assuming, *arguendo*, that Congress may restrict the authority of the states in this field, petitioners contend

the circuit court erred in holding that the California standard of true weight on the average at retail is preempted by the federal standard.

Deciding whether a state statute is in conflict with a federal statute and invalid under the Supremacy Clause is a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question of whether they are in conflict. *Perez v. Campbell*, 402 U.S. 637, 644 (1970). Preemption is found only where there is a direct and positive conflict between the state and federal objectives—where the challenged state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Perez v. Campbell, supra*, at 651-52.

The purpose of the Wholesome Meat Act is to protect consumers and competitors from misbranded and adulterated meat products. (21 U.S.C. § 602.) Under this Act a packaged meat product is misbranded unless it bears “an accurate statement of the quantity of contents . . . *Provided*, That . . . reasonable variations may be permitted . . . by regulations prescribed by the Secretary [of Agriculture].” (21 U.S.C. § 601(n)(5).) Pursuant to this authority the Secretary has adopted 9 C.F.R. 317.2(h)(2).<sup>5</sup>

<sup>5</sup>9 C.F.R. 317.2(h)(2) provides:

“The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.”



California Business and Professions Code section 12211,<sup>6</sup> which the lower federal courts held to be preempted by the Wholesome Meat Act, requires that each "sealer" (weights and measures official) weigh packages "in order to determine whether [they] contain the quantity or amount represented . . ." and permits the Director of Food and Agriculture to adopt regulations for the accomplishment of this objective provided that the average weight or measure of the packages . . . in a lot . . . sampled shall not be less . . . than the net weight or measure stated upon the package. . . ." The Director adopted such a uniform testing procedure (4 Cal. Admin. Code § 2930 *et seq.*) which both the District and Circuit Courts recognized to be statistically valid (Appendix A, *infra*, at p. 8 and p. 52), but criticized for not recognizing only the causes of variations described in 9 C.F.R. 317.2(h)(2).

Petitioners contend that the court below erred in its determination of the existence of a conflict between state and federal laws and in its assessment of the extent of that conflict. *First*, the purpose and effect of the invalidated California law are to require and enforce true weight on-the-average at retail. This standard is fully in accord with the intent of the Wholesome Meat Act. (As the courts below acknowledged Article 5, the California testing procedure, is a statistically sound means of determining the true weight of any lot of product.)

*Second*, use of the true-weight-on-the-average standard and of numerical limits on the reasonableness of variations are specifically authorized by the Secretary

<sup>6</sup>The full text of this statute is set out in Appendix B, *infra*, pp. 68-69.

of Commerce, National Bureau of Standards (United States Department of Commerce, National Bureau of Standards, Checking Prepackaged Commodities, 1959). *Third*, federal agencies have adopted the accuracy-on-the-average interpretation used by California but rejected by the court below. The United States Department of Agriculture and Environmental Protection Administration each has interpreted statutes which require that label statements of weight be accurate, but which allow adoption of regulations which permit reasonable variations to require accurate weight *on the average*. (Appendix B, *infra*, at pp. 71-73.)

Thus the court below erred (1) in finding the weight standard enforced in California to be in conflict with that established by the Wholesome Meat Act, and (2) in concluding that California's laws are preempted.<sup>7</sup>

Even assuming, *arguendo*, that there is a conflict between state and federal standards, there are no facts justifying the conclusion that the state system stands in opposition to the federal—a necessary precondition to a finding of preemption. Not only is there no direct and positive conflict between the objectives of the state and federal laws, but it is only through enforcement of the state laws that the purposes of the federal law is being carried out. V. L. Hutchings, officer in charge of the USDA Western Region Compliance Staff, testified at trial that (1) he has seven

<sup>7</sup>*Armour v. Ball*, *supra*, is inapposite as there the ingredient standard sought to be imposed by Michigan was, *arguendo*, materially different from the standard promulgated by the Secretary of Agriculture. By contrast, in the instant case the California standard is in accord with principles established by the National Bureau of Standards and similar to the former USDA (now EPA) regulation which was adopted pursuant to a statute which imposes a standard identical to that in issue.

compliance officers for the 12 western states (including Alaska and Hawaii), (2) these officers do not themselves have the training or equipment to make the necessary retail level inspections, and (3) USDA must therefore rely upon States and state procedures to determine whether product is short weight. And while there is not one reported case of USDA enforcement of truth of packaging standards under the Wholesome Meat Act, in 1975 alone Los Angeles County brought 363 court cases. It should be clear from this evidence that it is only by means of the enforcement action of California weights and measures officials that the Federal statutory standard of true weight at retail is enforced.

**C. The Decision Below Is Contrary to Principles Affirmed by the Second Circuit in *General Mills, Inc. v. Furness***

In *General Mills, Inc., et al. v. Furness*, 398 Fed. Supp. 151 (S.D. N.Y. 1974), *affd.* 508 F. 2d 536, the court rejected plaintiff's contention of preemption of a New York City ordinance regulating the weight of prepackaged commodities which was found to be substantially more stringent than applicable federal standards (under the Food, Drug and Cosmetic Act, 52 Stat. 1040, 21 U.S.C. § 301 *et seq.* and Fair Packaging and Labeling Act, 80 Stat. 1296, 15 U.S.C. 1451 *et seq.*)

Taking particular note of the defendant's interest in regulating weights and measures, the court affirmed the City of New York's power to regulate in this field even though one consequence might be to require out of state packagers to alter their practices to conform to the local standards which are applied equally to all.

Petitioners contend that the principle of *General Mills v. Furness*, reaffirming the power of state and local agencies in non-discriminatory regulation of weights and measures, is applicable in the instant case and that the court below erred in voiding California's non-discriminatory enforcement procedure.

**D. The Decision Below Will Have a Decisive, Adverse Impact Upon Consumers and Competitors and Upon Federal-State Relations**

The decision below voids state laws designed to (1) enable consumers to rely upon the truth of representations made to them in the marketplace, (2) assure that all competitors must meet the same, beneficial standards. To all the States the consequences of the ruling below are severe. If the ruling below is permitted to stand, the States will be unable to prevent the sale of foodstuffs which are falsely labeled or adulterated.

The present state laws which require a uniform standard of accuracy are important to: (1) *consumers* who must rely on package labels showing net weight or net quantity in comparing values among competing products, (2) *retailers* who not only sell packaged goods in competition with other retailers, but who are also large purchasers of packaged products which they then repackage into smaller products, for example meat cuts and cheeses, (3) *restaurant operators, schools and other institutions* that buy large quantities of packaged foods, (4) *federal agencies* such as the Department of Defense and the Veteran's Administration that buy large quantities of packaged foods, (5) *packagers* of food and other consumer products who are in competition with domestic and foreign packagers, (6) *farmers*



who sell to packagers, since shortages in packages can mean less total product purchased, and (7) *manufacturers and servicers of packaging, weighing and measuring equipment* since packagers who are permitted shortages depending upon the type of equipment used are induced to use poor rather than modern, accurate equipment.

Petitioners contend that no constitutional principle permits the result reached by the circuit court. As Justice Charles Evans Hughes said in *Savage v. Jones*, 225 U.S. 501, 528 (1911):

“ . . . the Constitution of the United States does not secure to anyone the privilege of defrauding the public.”

The conflict of the ruling below with the sovereign authority of the States to prevent fraud in the marketplace and with principles of prior decisions of this Court justify the granting of certiorari.

**2. In Reversing the Trial Court's Finding That 9 C.F.R. Section 317.2(h)(2) Was Void for Vagueness, the Court of Appeals Has so Far Departed From the Usual Course of Judicial Proceedings as to Call for an Exercise of This Court's Power of Supervision Over Federal Courts**

When read together with 9 C.F.R. section 317.2(h)(2), 21 U.S.C. section 601(n)(5) defines a packaged meat product to be misbranded if it is “unreasonably” short weight.

While the Court of Appeals recognized the public importance of the question of the validity of 9 C.F.R. section 317.2(h)(2), Appendix A, *infra*, at p. 26, it

treated the matter summarily and overturned the trial court's well reasoned conclusion that the regulation was void for vagueness.

In so holding the Court of Appeal categorized the question as one of “facial” invalidity (Appendix A, *infra*, at p. 26), stated there was no evidence tending to show how much weight variation is considered reasonable by the trade, and concluded that Christensen and Becker had the burden of showing that the regulation is incapable on its face of setting a standard for its enforcement but had failed to meet that burden (Appendix A, *infra*, at p. 35). The court below also ignored the evidence introduced in the trial court and that court's refusal to hear other evidence on these very issues.

Assuming, *arguendo*, that the Court of Appeals is correct in its assertion that the issue is one of facial invalidity of the questioned regulation, the court below clearly erred in its holding that the regulation as it interprets it sets an ascertainable standard.

The vagueness of the instant regulation as interpreted by the circuit court is manifest. As set forth *supra*, the court below interprets this regulation as permitting “reasonable variations.” Yet nowhere in the regulation is there definition of the phrases (1) “good distribution practices,” (2) “unavoidable deviations,” (3) “good manufacturing practices,” or (4) “reasonable variations.” Moreover, as interpreted by the court below, the term “variations” suddenly takes on a *different* meaning—that of “shortages.” Rather than follow (1) the accuracy-on-the-average interpretation utilized by the National Bureau of Standards, the federal agency charged by law (*See* 31 Stat. 1449, 15 U.S.C.

§§ 272(d) and (5)) with supervising weights and measures laws and enforcement, or (2) the same interpretation of an identical statutory standard by two federal agencies, or (3) the judgment of the trial judge who heard a USDA official describe how this regulation was being applied, the circuit court chose to ignore all constructions of the regulation which give an ascertainable standard and thus reverted to a non-standard.

The regulation as construed by the court below provides no guidance in determining whether a weight shortage is "reasonable" or "unreasonable," and is contrary to USDA administrative interpretation and EPA regulation under an analogous statute. *See supra*, at pp. 12-13 and Appendix C, *infra*, at pp. 71-73. And USDA practice in the meat inspection field is wholly arbitrary, the decision to recommend removal from sale of short weight packages depending solely upon "a judgment call" on the part of the Regional Compliance Officer. Testimony on this point by the Officer in Charge, Western Region, USDA Compliance Staff (*See Appendix C, infra*, at pp. 74-88) had considerable impact upon the trial judge, who found the regulation at issue to be void for vagueness.

And, when counsel for petitioner Becker attempted to introduce evidence of industry practice to show that other packers met the standard of regulation urged by petitioners—accurate weight on the average—the trial court refused to admit evidence on this point. (Appendix C, *infra*, at pp. 88-91.)

Thus, while holding that petitioners had the burden of showing the questioned regulation to be invalid, the Court of Appeals (1) ignored a construction of the regulation which would yield a useful standard, (2) ignored the trial judge's judgment in favor of petitioners after he heard only the evidence on this point which petitioners were permitted to introduce, and (3) failed to remand with instructions to the trial court to permit petitioners to introduce other evidence on this point to sustain the burden<sup>8</sup> which the circuit court finds that petitioners did not meet.

The result is fundamentally unfair—a clear denial of due process of law—requiring review by this court.

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<sup>8</sup>In validating the regulation the court below relied in large part upon this court's decision in *United States v. Shreveport Grain & E Co.*, 287 U.S. 77 (1932). However, as the District Court points out, 357 Fed. Supp. at 534, *Shreveport* does not reach the question presented in the instant case: the redelegation to each USDA compliance officer of deciding whether in "his judgment" a variation (caused by an unknown) is or is not "reasonable."

The court below also relies heavily upon validation by Congressional inaction: "Forty-two years of Congressional silence is strong evidence that Congress has acquiesced in the Secretary's [Agriculture] interpretation of the scope of his powers." (Appendix A.)

First, the logic in this statement is questionable—even long-standing acquiescence in unconstitutional activity cannot correct constitutional infirmities.

Second, Congressional inaction may, equally, stand for approval of the States' activity in this field.

Third, the absence of Congressional action on any question is hardly evidence of more than the inherent complexity and slowness of the legislative process. As the Congress has never had the occasion to review by legislative change the Secretary of Agriculture's enforcement of the Wholesome Meat Act, citation by the court below of *Red Lion Broadcasting Co. v. F.T.C.*, 395 U.S. 367, 381 (1969) and *Flood v. Kuhn*, 407 U.S. 253, 283 (1972) is inapposite.



**3. The Holding of the Courts Below That There Is Federal Jurisdiction Raises Significant and Recurring Problems Concerning the Jurisdiction of Federal Courts and Is in Conflict With Prior Rulings of This Court**

The complex procedural history of the action below and the two prior California Superior Court lawsuits is outlined in the statement of the case, *supra*.<sup>9</sup>

Petitioners contend that the court below grossly erred in holding that the facts of the instant case make inapposite application of the principle of this court's decision in *Missouri-Pacific Ry. Co. v. Fitzgerald*, 160 U.S. 556 (1896) and *Public Service Commission v. Wycoff*, 344 U.S. 237 (1952).

The consequence of this error by the court below was to confirm the fragmenting and scattering of litigation of the same questions among three courts, and to encourage future litigants who are sued by state law enforcement officers in state courts to bring "new" actions in federal court. The multiplicity of litigation and second class status for state courts which the

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<sup>9</sup>The crucial facts are these: On February 17 and March 1, 1972, respectively, the District Attorneys (the Court of Appeals mistakenly ascribes these lawsuits to the County Counsel of these counties, Appendix A, *infra*, at pp. 9 and 10) of Riverside and Los Angeles Counties filed suit against Rath alleging violations of state false advertising and unfair competition laws because, when offered for retail sale, the weight representations made on the packages offered were false. Rath removed both cases to District Court. Three days prior to entry of the remand orders, Rath filed the action from which this petition arises. That action contains allegations virtually identical to those made in Rath's counter-claims filed during the removal proceedings and to those which Rath made in the state court actions, thus showing Rath's attempt to litigate its defenses to the State Court actions in Federal Court.

decision below encourages is in conflict with a proper relationship between state and federal courts. Just as a "new" action in federal court was brought in this case so could "new" actions be brought to halt all state enforcement activities.

In response to petitioners' contention that Rath's District Court action was nothing more than an attempt to get collateral review of the remand orders—a maneuver which is specifically prohibited by 28 U.S.C. section 1447<sup>10</sup>—the Court of Appeals reasoned that, notwithstanding the issuance of such an order by the District Court, Rath was entitled to a federal forum because the District Court had not made any decision with respect to the propriety of a federal forum for Rath's claims. Appendix A, *infra*.

In so holding the court below departed from this court's decision in *Missouri Pacific Ry. Co.*, *supra*, that the policy of finality in remand orders is applicable in federal question as well as in diversity cases and that after remand federal question defenses *must* be litigated in the state court to which the action is returned. *Id.* at 583. *Accord Chandler v. O'Bryan*, 445 F. 2d 1045, 1057-58 (10th Cir. 1971).

Further, the Ninth Circuit's decision that the procedural history of this litigation does not demonstrate Rath's seizure of this litigation from state court is contrary to the principle enunciated by this court in *Public Service Commission v. Wycoff*, *supra*.

"Where the complaint in an action for declaratory judgment seeks in essence to assert a defense

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<sup>10</sup>28 U.S.C. section 1447 provides: "(d) An order remanding a case to the State court from which it is removed is not reviewable on appeal or otherwise. . . ."

to an impending or threatened state court action, *it is the character of the threatened action, and not of the defense*, which will determine whether there is federal question jurisdiction in the District Court. If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim. *This is dubious even though the declaratory complaint sets forth a claim of federal right, if that right is in reality in the nature of a defense to a threatened cause of action. Federal courts will not seize litigation from state courts merely because one, normally a defendant, goes to federal court to begin his federal law defense before the state court begins the case under state law.*" 344 U.S. at 248. (Emphasis added.) See also *Skelly Oil Co. v. Phillips Co.*, 339 U.S. 667, 672-74 (1950).

Attempting to distinguish the instant case from *Wycoff* the court below asserted that *Wycoff* applies only when the controversy is "merely threatened or impending" (Appendix A, *infra*, at p. 17) and that the instant controversy was not created by the institution of the state court actions against Rath, but arose independently thereof by virtue of the removal of short weight packages from sale prior to the commencement of the state court lawsuits. (Appendix A, *infra*, at p. 19.)

*The facts compel a contrary conclusion.* Even though petitioner Becker met with Rath representatives and

informed Rath that short weight packages would be removed from sale, which, according to the Court of Appeals, was sufficient basis for Rath to seek relief in a federal forum, Rath did *nothing* until the District Attorneys filed suit and even then Rath took no "independent" action until it realized that the state court actions would be remanded.

Further, reliance of the court below upon this court's decision in *Public Utilities Commission of California v. United States*, 355 U.S. 534 (1958) is misplaced. That case does not stand for the principle that *Wycoff* is merely a statement that controversies which are not ripe are not justiciable. Rather, it stands for an entirely different proposition: when an administrative agency cannot provide the remedy sought, the aggrieved party may seek relief in an appropriate tribunal.

By contrast, in the instant case, Rath's federal claims would be properly presented and appropriately considered in state courts. Rath was not without a state forum which would fairly consider its federal claims. And, in the manner in which those claims arose, Rath's claims were by way of defense to a charge of violating state laws. Thus *Wycoff* commands that those claims be litigated in the state forum, and thus the court below should have dismissed Rath's federal complaint for want of jurisdiction.

In *Hicks v. Miranda*, 423 U.S. 332 (1975), this court confirmed that the rule of *Younger v. Harris*, 401 U.S. 37 (1970) is designed to "permit state courts to try state cases free from interference from federal courts [citation omitted] particularly where the party to the federal case may fully litigate his claim before



the state court." 422 U.S. at 349. *Accord Samuels v. Mackell*, 401 U.S. 66 (1970).

While the state court prosecutions in the instant case were for injunction and civil penalties and thus not criminal in nature, they were nevertheless actions to enforce state statutes brought by law enforcement officials. Petitioners submit that for reasons analogous to those underlying this court's decision in *Younger v. Harris* the trial court below should not have undertaken to adjudicate this state court defendant's defenses when there was no indication that they would not receive fair treatment in state court.

Thus, the refusal of the court below to dismiss Rath's complaint was an egregious error requiring intercession by this court.

**4. In Affirming the Trial Court's Issuance of an Injunction in the Face of Substantial Evidence of Rath's Unclean Hands, the Court Below Has Sanctioned a Departure From the Accepted Course of Judicial Proceedings and Disregard for Prior Decisions of This Court, as to Call for an Exercise of This Court's Power of Supervision**

In *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806 (1945), this court confirmed that a party with unclean hands may not invoke the equity jurisdiction of a court, and noted the added significance of the doctrine of unclean hands where the suit in equity concerns the public interest. *Id.* at 815.

The instant case is one of public importance, as is demonstrated by the necessity for a weights and measures system upon which competitors and consumers

can both rely and by the impediments to commerce and to confidence in governmental agencies which result from failure of these agencies to discharge their duty of assuring the truthfulness of product information which is disseminated. The public significance and widespread effect of the ultimate decision in this case was recognized by the Court of Appeals. (Appendix A, *infra*, at p. 26.)

Although Rath knew its label statements of weight were false when its packaged bacon was sold to consumers, Rath fully intended and expected that consumers would believe those statements to be true. When confronted with this obvious duplicity Rath complained to the federal courts that the State of California would not permit Rath to continue this deceptive practice.

In the face of the recognized public importance of this case and apparent disregard of the facts—which showed Rath to be knowingly in violation of the statute which it sought to invoke,<sup>11</sup> thus clearly demonstrating Rath's unclean hands—the District Court granted, and the Court of Appeals affirmed, equitable relief to Rath.

Petitioners submit that this constituted a manifest abuse of discretion compelling review by this court.

<sup>11</sup>Evidence introduced at trial showed that more than 45% of the packages of bacon which Rath produced were short weight at time of shipment from Rath's plant—in violation of 21 U.S.C. §607(b). Further, one of the components of the aqueous curing solution which Rath uses to cure its bacon, tripolyphosphate, causes the product to retain moisture. An offer of proof by Christensen of Rath's own records was made which revealed that during three weeks' production there was produced 3,904, 3,300 and 12,898 more pounds of bacon than pounds of raw product used, a gross violation of federal laws. (Appendix C, *infra*, at pp. 95-96.)

**Conclusion**

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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**APPENDIX A.**

**Opinion of the United States Court of Appeals  
for the Ninth Circuit**

United States Court of Appeals, for the Ninth Circuit.

The Rath Packing Company, a corporation, *Plaintiff, Counter-Defendant and Appellant*, vs. M. H. Becker as Director of the County of Los Angeles Department of Weights and Measures, *Defendant, Appellee and Cross-Appellant*. Nos. 73-2481, 73-2482, 73-3092.

C. B. Christensen as Director of Agriculture of the State of California, *Intervenor, Appellee and Cross-Appellant*.

The Rath Packing Company, a corporation, *Plaintiff and Appellant*, vs. Joseph W. Jones as Director of the County of Riverside Department of Weights and Measures, *Defendant, Appellee and Cross-Appellant*. Nos. 73-2496, 73-3180.

[October 29, 1975]

Appeal from the United States District Court for the Central District of California.

Before: BROWNING and TRASK, Circuit Judges,  
AND RICH, Judge.\*

RICH, Judge:

These suits were brought by Rath Packing Company (hereinafter "Rath") to enjoin the enforcement of certain California statutes and regulations pertaining to the labeling by weight of packaged foods at retail, and for a declaration that the federal Wholesome Meat

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\*The Honorable Giles S. Rich, Judge, United States Court of Customs and Patent Appeals, sitting by designation.



Act of 1967, 21 USC, §601 et seq., and a regulation promulgated thereunder, 9 CFR 317.2(h)(2), preempt these California statutes and regulations. They were consolidated for decision in the district court and on appeal.

Rath is a nation-wide processor and seller of meat products, including bacon, and maintains a meat-packing establishment at Vernon, California, which is subject to federal inspection under the Wholesome Meat Act and 9 CFR 302.1 as an establishment in which "any products of \* \* \* carcasses of livestock are \* \* \* prepared for transportation or sale as articles of commerce, which are intended for use as human food." Becker and Jones are the Directors of the Departments of Weights and Measures of Los Angeles and Riverside Counties, California, respectively. They are responsible for the actual enforcement of the State weights and measures laws in their counties. Intervenor Christensen is the Director of Agriculture of the State of California.

Jurisdiction in the district court was based on 28 USC, §1331(a), as it was alleged that a case or controversy arising under the laws of the United States involving more than \$10,000 was presented.<sup>1</sup> We have jurisdiction of this appeal under 28 USC, §1291.

The district court, in a memorandum and order reported at 357 F. Supp. 529 (C.D. Cal. 1973), granted in part the relief requested, and all parties appealed the determinations adverse to them.

This case is a companion to *General Mills, Inc., et al. v. Jones*, Nos. 73-3583 and 74-1051, decided

<sup>1</sup>It is not disputed that the jurisdictional amount is present.

concurrently herewith. Much of the discussion in this opinion is applicable to the *General Mills* case as well.

### *Background*

This case concerns the packaging and weighing of bacon. In order to understand the issues, a brief description of the properties of bacon and how it is packed and weighed is necessary.

The weighing and packaging of bacon at the Rath plant takes place under internal Rath procedures which have been submitted to an official of the United States Department of Agriculture (USDA). After the pickled and smoked pork bellies come from the bacon press, where they are squared into uniform rectangular shapes, they are sliced by a machine, which distributes the slices in "drafts" of approximately one pound weight. An operator places each draft on an insert, or "tux", board, which is a hardboard coated either with wax or with polyethylene.<sup>2</sup> The drafts are then passed to a scaling station, where they are weighed and the operator either adds or removes bacon to bring the weight within a predetermined target limit. After scaling the bacon is passed to a tux overwrap machine, which inserts the bacon into a carton and seals it. This carton is not hermetically sealed and the bacon in it does lose some moisture to the atmosphere over time. Although Rath now does use some hermetically sealed bacon containers, this packing method is agreed to be in accordance with good distribution practices.

<sup>2</sup>The polyethylene-coated boards have absorbed 4/16 oz. less of bacon moisture and grease than the wax-coated board 4 days after pack. The saturation point of waxed board is reached 6 to 9 days after pack; about 5/16 oz. is absorbed.

Once the bacon is weighed at the scaling station, it is not weighed again before it leaves the Rath plant, an average of 4 days, never more than 8 or 9 days, later. In determining the pass zone Rath follows the USDA procedure of subtracting from the actual weight of the draft and the tux board on which it lies the weight of a *dry* tux board. This method uses a "dry tare."<sup>3</sup> There is no evidence that Rath has violated federal weight standards in any way.

The federal program for regulation of net weight labeling of meat and meat food products exists in part under the Wholesome Meat Act of 1967, *supra*. The Act added the concept of "misbranding" to the prior federal meat inspection laws. 21 USC §601(n) provides in relevant part:

(n) The term "misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

\* \* \* \*

(5) if in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Secretary [of Agriculture];

\* \* \* \*

<sup>3</sup>"Tare. \* \* \* la: the weight of a container or vehicle that is deducted from the gross weight to obtain the net weight." *Webster's Third New International Dictionary* 2341 (1971).

In 9 CFR 317.2(h)(2) the Secretary purported to implement §601(n)(5):

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

In the supermarket the California inspectors employed a different weighing method, using a "wet tare."<sup>4</sup> The California procedure is set forth in detail in 4 Cal. Admin. Code ch. 8, subch. 2, Art. 5. Briefly, the California inspectors follow a twelve-step procedure set forth in Section 2933.3 of the regulations:

(1) determine the number of packages in the lot to be sampled;

(2) from a table in the regulation, determine the total package sample size (e.g., 15 packages out of a lot of 300);

(3) from the same table, determine the tare sample size (e.g., 2 packages out of a lot of 300);

(4) record the gross weight of each tare sample package;

<sup>4</sup>The difference in tares employed is not an issue in this case.



(5) remove the usable contents from each tare sample, weigh the used, empty container, and compute the average tare weight;<sup>5</sup>

(6) weigh the remaining packages in the package sample and record their weights, determining the amount of error from labeled weight for each package;

(7) [not applicable to bacon];

(8) calculate the preliminary total error for the sample, and determine the arithmetical average error;

(9) calculate the range of error for each subgroup of the package sample;

(10) determine whether any unreasonable errors exist, and eliminate from further computations all samples whose errors exceed the preliminary average error in underweight situations by more than the amounts set forth in tables in the regulations; if the number of unreasonable errors exceeds a certain set figure for each sample size, further action, including the issuance of off-sale orders, may be undertaken.

(11) recalculate the total and average error of the sample excluding the unreasonable errors;

(12) "(a) If the total error as obtained from the sample is plus and is less than the value shown in Table III for the corresponding range and sample size, then a shortage may or may not exist, and additional samples may or may

<sup>5</sup>The container and tux board are weighed with all matter adhering to the tare that does not pull off when the bacon is removed included, as well as with any grease or moisture that the tux board may have absorbed from the bacon. This is "wet tare."

not be taken, depending upon the discretion of the weights and measures official. If no additional samples are taken then the procedures as set forth in the following sections shall govern the disposition of the lot.

"(b) If the total error obtained from the sample is less than the above-determined value, and the error is minus, then a shortage may or may not exist, and additional samples may or may not be taken, depending upon the discretion of the weights and measures official. If no additional samples are taken the lot shall be passed. If additional samples are taken then the procedures as set forth in the following sections shall govern the disposition of the lot." [Sec. 2933.3.12.]

If an inspector cannot pass the lot based on this sampling technique or after retesting, he then may order the lot off-sale under the provisions of California Business and Professions Code §12211:

Each sealer shall, from time to time, weigh or measure packages, containers or amounts of commodities sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being sold in accordance with law.

\* \* \* \*

Whenever a lot or package of any commodity is found to contain, through the procedures authorized herein, a less amount than that represented, the sealer shall in writing order same off sale and require that an accurate statement of quantity be placed on each such package or container

before the same may be released for sale by the sealer in writing. The sealer may seize as evidence any package or container which is found to contain a less amount than that represented.

Evidence was adduced at the trial from various California officials, including Becker, that the county departments do not recognize variations in net weight that result from water loss during good distribution practice. Mr. Cervinka, a statistician employed by the California Department of Agriculture, testified on direct examination as an expert for Christensen that Art. 5 of the regulation, described above, is a statistically valid procedure. On cross-examination he indicated that Art. 5 does not make any distinction between products that lose water and those that do not, nor does it make provision for any weight reductions during the course of handling. On this and other evidence the district court concluded that Art. 5 uses "absolute" weight as determined by statistical methods as its measure of compliance and makes no reference in describing the steps of the weighing and calculating process to reasonable variations from label weight caused by "loss \* \* \* of moisture during the course of good distribution practice." The district court's fact findings have substantial evidentiary support and are not clearly erroneous. F.R.Civ.P. 52(a). Becker, Christensen, and Jones do not urge error in the district court's construction of Art. 5.

#### *Procedural History*

During the period September 1971 to March 1972 inspectors under the supervision of Becker and Jones visited supermarkets in Los Angeles and Riverside

Counties and weighed packages of Rath bacon to determine compliance with the State statute and regulations concerning net weight labeling. Becker's representatives ordered approximately 84 lots of bacon off sale for short weight; Jones ordered nearly 400 packages of Rath bacon off sale in the period September 29 to December 30, 1971, for the same reason.

On February 17, 1972, the Riverside County Counsel brought an action in the name of the People against Rath in the Superior Court for Riverside County for an injunction under Cal. Civ. Code §3369<sup>6</sup> and for civil penalties under Cal. Bus. and Prof. Code §17536,<sup>7</sup> alleging that Rath had committed acts of unfair competition in violation of Cal. Bus. and Prof. Code §17500<sup>8</sup> by distributing for sale in Riverside County super-

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<sup>6</sup>Civil Code §3369 provides in material part:

2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include \* \* \* any act denounced by Business and Professions Code Section 17500 to 17536, inclusive.

<sup>7</sup>Section 17536:

(a) Any person who violates [§17500] shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

<sup>8</sup>Section 17500:

It is unlawful for any \* \* \* corporation \* \* \* to make or disseminate or cause to be made or disseminated before the public in this State, any representation \* \* \* in any \* \* \* manner or means whatever, concerning \* \* \* personal property \* \* \* or concerning any circumstances or matter of fact connected with the \* \* \* disposition thereof, and which is known, or which by the exercise of reasonable care should be known, to be true or misleading \* \* \*.



markets the packages of bacon that Jones' representatives had ordered off sale. On March 1, 1972, the Los Angeles County Counsel filed a similar action against Rath in the Superior Court for Los Angeles County.

Rath removed both actions to federal district court within a week thereafter; but on March 20, 1972, the district court remanded the actions to the State courts, finding, at least with respect to the Riverside action, that there was no diversity of citizenship and that "[n]o substantial federal question is presented on the face of the pleadings."

Meanwhile, on March 17, 1972, Rath filed two actions in federal district court, one against the People<sup>9</sup> and Becker, the other against Jones. Rath requested declarations that the California statutes and regulations impose labeling standards on meat food products prepared by Rath that are in addition to or different than the standards of the Wholesome Meat Act of 1967, specifically 21 USC, §601(n)(5) and 9 CFR 317.2(h)(2) and that California could not impose weight labeling requirements on Rath meat food products after they left the Rath plant. Rath also requested injunctions against the enforcement by Becker and Jones of labeling requirements in addition to or different than those in the Act and against the ordering off-sale or otherwise preventing the sale of Rath products for failure of the products to bear an accurate label in terms of net weight after they have left Rath's

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<sup>9</sup>The People were dismissed as a party by the district court on the ground that the Eleventh Amendment bars suits against the State of California by a citizen of another State. Rath is an Iowa corporation and is a citizen of Iowa for this purpose. No appeal was taken from this dismissal.

plant. Becker, Jones, and Christensen counterclaimed for the same relief sought by the State in the state court actions.

After the remands, on March 30, 1972, Rath answered the state court complaints and filed cross-complaints seeking the same relief, in virtually the same language, as Rath sought in federal court. In July 1972 Christensen intervened in both the state and federal court litigations.

Becker filed in the district court motions requesting the court either to abstain from deciding the federal court action or to stay the federal action pending final determinations in the state court actions. The district court denied these motions in May 1972. On November 14, 1972, the superior court in the Riverside action dismissed Rath's cross-complaint; Rath appealed. On the very next day, Christensen and Becker moved the district court to dismiss Rath's action or to stay it pending decision on Rath's state appeal. The district court denied the motions, and this court, on Christensen and Becker's petition for a writ of prohibition, declined to disturb the district court's assumption of jurisdiction.

On April 3, 1973, the district court, after a trial on the merits of Rath's action against Becker and on cross-motion for summary judgment in the action against Jones, entered judgment declaring Cal. Bus. and Prof. Code §12211 and 4 Cal. Admin. Code ch. 8, subch. 2, Art. 5 to be preempted by federal law and enjoining their enforcement. In the course of its Memorandum the court held that 9 CFR 317.2(h)(2) was invalid, and that thus the sole federal labeling standard was "accurate" weight. The court also held

that accurate weight labeling standards could be applied to packages of meat and meat food products at the retail level. Cross-appeals were taken to this court.

The Riverside action continued, and in January 1974, while Rath's first appeal was still pending in the California District Court of Appeal, the superior court entered summary judgment on the complaints of Jones and Christensen against Rath; Rath appealed again. In an unreported decision in April 1974 on Rath's first appeal, the California appellate court reversed the dismissal of Rath's cross-complaint against Jones, holding that the federal court's judgment was *res judicata* on the issue of the validity of §12211 and Art. 5 (to the extent that it implemented §12211). On Rath's second appeal, in December 1974, the appellate court reversed the grant of summary judgment on the complaints and remanded the case to the Riverside superior court for trial, holding that there existed issues of fact that required trial. *People v. Rath Packing Company*, 44 Cal. App. 3d 56, 118 Cal. Rptr. 438 (1974). The appellate court also explained further the basis of its decision on Rath's first appeal, holding that the effect of the federal court judgment was to preclude relitigation of the narrow issue of the preemption of §12211, and its implementation in Art. 5, by the Wholesome Meat Act. The appellate court held, 118 Cal. Rptr. at 446 n. 6, that Art. 5 is not unconstitutional.

Although the record does not contain any notice of the proceedings in the Los Angeles superior court action, we are informed by Rath's reply brief that in February 1974 the Los Angeles court gave *res judicata* effect to the final judgment on the preemption issue and decided in Rath's favor the issues of constitutionality and whether Becker's ordering of Rath's bacon

off sale complied with state law. An appeal from this judgment is pending.

I.

Becker, Jones, and Christensen contend that the district court lacked jurisdiction of the subject matter before it, and, in the alternative, that the principles of abstention and comity required the court to stay its hand until the state court actions had proceeded to judgment. We reject both contentions.

A.

The question of subject matter jurisdiction may be raised by the parties at any time or by the court sua sponte. *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1938); F.R.Civ.P. 12(h)(3). Becker et al. first contend that the declaratory judgment actions brought by Rath are nothing more than attempts to get collateral review of the remands to state court of the actions brought against Rath by the People which Rath had removed to the district court. 28 USC, §1447, provides:

§1447. *Procedure after removal generally.*

\* \* \* \*

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise \* \* \*.

Their second contention is that Rath's claim for declaratory and injunctive relief in the district court is in reality a defense to the state court actions, and, as such, cannot form a basis for federal question jurisdiction under 28 USC, §1331.

After the institution of Rath's federal action Becker et al. presented these contentions to this court by



way of a petition for a writ of prohibition, *Becker et al. v. Real*, No. 72-3037, which the court, Ely and Hufstedler, Circuit Judges, denied.<sup>10</sup> We find no reason to depart from that decision.

Federal question jurisdiction is determined by the federal district court solely from the face of plaintiff's complaint. *Gully v. First National Bank*, 299 U.S. 109 (1936). Removability cannot be created by defendant pleading a counter-claim presenting a federal question under 28 USC, §1331. See 1 Barron & Holtzoff, *Federal Practice and Procedure* (Wright Ed.) §102; *United Artists Corp. v. Ancore Amusement Corp.*, 91 F. Supp. 132 (S.D. N.Y. 1950). Thus, Rath's answer and cross-complaint in the state court, raising its claim for declaratory and injunctive relief under federal law, were not<sup>11</sup> before the district court when it remanded the removed state court actions and do not raise any issues necessarily adjudicated by the court in deciding to remand. The decision of the district court that the case does not invoke the federal jurisdiction and must be remanded precludes further litigation of the issue of the forum in which the *removed case* is to be litigated. *Missouri Pacific Ry. Co. v. Fitzgerald*, 160 U.S. 556, 583 (1896). The decision of the district court to remand has no bearing on the merits of

<sup>10</sup>"It appearing from the face of the pleading that the District Court has jurisdiction, the petition is denied. This Court does not, however, now express any further opinion on the merits of the controversy."

We are not foreclosed by this order from reexamining the jurisdictional issue at this time; we merely find the decision to be sound.

<sup>11</sup>And could not have been, since the remand order was entered March 20, 1972, and Rath's claims were first presented in the state court actions on March 30, 1972.

the underlying claims. Since the district court did not make any decision with respect to the propriety of a federal forum for Rath's claims, we cannot say that the maintenance of Rath's claim in federal court works a circumvention of 28 USC, §1447(d). Cf. *Chandler v. O'Bryan*, 445 F.2d 1045, 1057 (10th Cir. 1971). Rath is not contending that the remand orders were erroneous, but only that it has a right to a federal forum for its alleged federal claims.

The argument that Rath's claims are not within the federal question jurisdiction, it not being denied that there is no diversity of citizenship, takes its roots in the statement of the Supreme Court in *Public Service Commission v. Wycoff*, 344 U.S. 237, 248 (1952):

Where the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, *it is the character of the threatened action, and not of the defense*, which will determine whether there is a federal-question jurisdiction in the District Court. If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim. This is dubious even though the declaratory complaint sets forth a claim of federal right, *if that right is in reality in the nature of a defense to a threatened cause of action*. Federal courts will not seize litigations from state courts merely because one, normally a defendant, goes to federal court to begin his federal-law defense before the state court begins the case under state law \* \* \* (emphasis added [by the Court]).

The doubt that the Court expresses is still with us, e.g., C. Wright, *Law of Federal Courts* §18, at 62 (2d Ed. 1970).

In order to appreciate the *Wycoff* case we must first look to the jurisdictional background of the Declaratory Judgment Act, 28 USC, §2201.<sup>12</sup> The Act is procedural only, creating a new federal remedy without expanding the jurisdiction of the federal courts. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937). "‘Jurisdiction’ means the kinds of issues which give right of entrance to federal courts." *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950). The *Wycoff* "test" quoted *supra* has its origins in *Tennessee v. Union & Planters’ Bank*, 152 U.S. 454, 464 (1894), where the Court said, "a suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make the suit one arising under that Constitution or those laws." Furthermore, the complaint of the declaratory plaintiff must present a federal question "unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose." *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914).

In *Wycoff* the complainant brought an action for declaratory judgment against the Utah Public Service Commission, requesting a finding that the business

<sup>12</sup>§2201 provides:

In a case of actual controversy *within its jurisdiction*, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. \* \* \*. (Emphasis added.)

conducted by complainant in carrying goods between points in Utah was interstate commerce (and thus not subject to regulation by the Commission). The principal concern of the Court was the nature of the controversy presented, 344 U.S. at 244;

A multitude of rights and immunities may be predicated upon the premise that a business consists of interstate commerce. What are the specific ones in controversy? The record is silent and the counsel little more articulate. We may surmise that the purpose to be served by a declaratory judgment is ultimately the same as respondent's explanation of the purposes of the injunction it originally asked, which is "to *guard against the possibility* that said Commission would attempt to prevent respondent from operating under its certificate from the Interstate Commerce Commission." (Emphasis supplied [by the Court].)

From this the Court concluded that "this dispute has not matured to the point where we can see what, if any, concrete controversy will develop." 344 U.S. at 245. In the portion of *Wycoff* quoted three paragraphs above, the Court was applying its concern that the controversy was not ripe for adjudication by pointing out a declaratory plaintiff may not *create* a controversy by seeking to have a federal court adjudicate federal defenses he might assert in a proceeding before a state court or administrative tribunal which is not ripe, but which is merely threatened or impending.<sup>13</sup>

<sup>13</sup>The Court confirmed this view of *Wycoff* in *Public Utilities Commission of California v. United States*, 355 U.S. 534, 538-39 (1958):

(This footnote is continued on next page)



Another aspect of the matter was aired in *Chandler v. O'Bryan*, supra. O'Bryan brought a libel action in Oklahoma state court against Chandler, a United States District Judge, on statements made by Chandler to a newspaper accusing O'Bryan of bribing judges of the Oklahoma Supreme Court. Chandler removed the action to federal district court; but the district court held that the acts alleged in the complaint were not done in performance of Chandler's official duties as a federal judge, nor were they done under color of judicial office, and remanded the case to the state court for lack of a federal question, there being no diversity of citizenship. It is settled that Chandler's judicial immunity defense arises under federal law. *Howard v. Lyons*, 360 U.S. 593 (1959). A verdict for O'Bryan was returned in the state court. Chandler then filed a declaratory judgment action in federal court seeking to have the state libel judgment enjoined and expunged, alleging his federal judicial immunity claim. The district court granted relief to Chandler, 311 F. Supp. 1121 (W.D. Okla. 1969), but the 10th Circuit (by a panel of three judges of the 8th Circuit) reversed.

The court found *Wycoff* directly applicable, and held that Chandler was seeking a separate federal adjudication of a matter which was "in reality in the nature of a defense" to the state court libel action,

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The Commission has plainly indicated an intent to enforce the Act; and prohibition of the statute is so broad as to deny the United States the right to ship at reduced rates unless the Commission first gives approval. The controversy is present and concrete—whether the United States has the right to obtain transportation service at such rates as it may negotiate or whether it can do so only with state approval.

which was based solely on state libel law and raised no federal question itself. The action was dismissed for lack of federal jurisdiction.

The instant case is different. While it is true that judgment in Rath's favor affects the results of the Los Angeles and Riverside actions, we cannot say that Rath's action is premature or that Rath's claim is merely a defense to the state court actions. The ordering off-sale of Rath's products in September 1971 and afterward and the upward adjustment of the pass range at the sealing station at Rath's plant, increasing the overpack of bacon necessitated by California weighing procedures, it was stipulated below, caused Rath a loss of more than \$10,000. The off-sale orders themselves are sufficient State action to create an actual controversy between Rath and the state weights and measures officials. See *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 508 (1972). The present controversy was not created by the institution of the state court actions against Rath, but arose independently thereof by virtue of the off-sale orders.

Unlike *Chandler*, Rath's claims have vitality in the absence of the litigation in state court; Rath had the right to a federal forum before the institution of the state court actions. Chandler's federal claim was purely in the nature of a defense to the libel action. Brought without reference to the underlying state court proceeding, Chandler's claim would be a useless gesture: no one would care whether Chandler acted under the protection accorded by the courts to his office if O'Bryan had refrained from suing him. That Rath's claim is or can be the basis for a defense to the state court actions states a mere

truism,<sup>14</sup> the test is whether Rath has created a federal controversy where none existed or is seeking an adjudication of a claim which is essentially meaningful only when pleaded as a defense to the particular pending state court actions. We find neither factor present and consider that Rath has stated claims which are within the federal jurisdiction conferred on the district court by 28 USC, §1331.<sup>15</sup>

B.

We also hold that considerations of comity and abstention did not require the district court to relinquish jurisdiction.

Comity is a principle of long standing:

We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory. It would

<sup>14</sup>Becker, Jones, and Christensen do not assert that Rath's cross-complaints in the state court actions were compulsory under Cal. Code of Civ. Proc. §428.10; they assert that they were *improper* pleadings under the statute. We have no opinion on this matter of state procedure, but it does seem to us to show that the interposition of affirmative claims by Rath in the state courts is not a relevant factor in determining whether the federal courts have jurisdiction of Rath's affirmative claims.

<sup>15</sup>Jones' argument that the district court improperly assumed jurisdiction of a *res* already in the control of the state courts is without merit. Suits for injunctions are *in personam*, not *in rem*, *Penn General Casualty Co. v. Pennsylvania*, 294 U.S. 189, 195 (1935), and state and federal courts having concurrent jurisdiction are "free to proceed in [their] own way \* \* \*, without reference to the proceedings in the other court. \* \* \* The rule, therefore, has become generally established that where the action first brought is *in personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded." *Kline v. Burke Construction Co.*, 260 U.S. 226, 230 (1922). We observe that in any case Rath's claims were made in district court thirteen days before Rath's state cross-complaints were filed. The controversy here

be impossible for such courts to fulfil their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. The people for whose benefit these two systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws. The situation requires, therefore, not only definite rules fixing the powers of the courts in cases of jurisdiction over the same persons and things in actual litigation, but also a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure.

\* \* \* \*

The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy to attain which it assumed control, before the other court shall attempt to take it for its purpose. *Ponzi v. Fessenden*, 258 U.S. 254, 259-60 (1921).

This circuit has defined the rule of comity as "merely recognizing exclusive jurisdiction in the court first acquiring jurisdiction of any action." *Gregg v. Winchester*, 173 F.2d 512, 513 (9th Cir. 1949). Under these rules and in the present circumstances, the principle of comity does not suggest that the district court should have declined to hear Rath's claims. The subject matter of the litigation before us consists of the *federal*

is not over any property right or status in the *bacon*, but over the enforcement of state laws which affect how the bacon is sold.



questions raised by Rath in its complaint. These federal questions were first taken into the control of a court when Rath filed its complaint in the district court on March 17, 1972. No state court could have acquired jurisdiction over this subject matter until Rath answered and filed its cross-complaints in the state courts on March 30, 1972. Our conclusion is reinforced by the actions of the District Court of Appeal in the Riverside action twice giving *res judicata* effect to the federal district court judgment. If, as Becker and Christensen contend, the only matter preventing the first Riverside judgment, dismissing Rath's cross-complaint against Jones, from being given preclusive effect as a final judgment is Cal. Code of Civ. Proc. §1049,<sup>10</sup> the California appellate court would not have directed the trial court to abandon its position and to follow the federal judgment, which, since it had been appealed, was just as "final" as the Riverside judgment if evaluated under California law. We do not see here the federal-state conflict that the comity doctrine seeks to avoid. The district court acquired jurisdiction over the federal question prior to the state courts, and very scrupulously avoided deciding even tangentially the constitutionality of the California statutes and regulations or whether the actions of the inspectors were in compliance with state law. The state courts have not questioned the right of the district court to take the action it did and held the federal judgment entitled to preclusive effect in the state courts on the particular issues litigated in the federal court.

<sup>10</sup>Cal. Code of Civil Procedure §1049:

An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, \* \* \*

In applying the abstention doctrine a federal district court has *discretion* in *declining* to exercise or *postponing* the exercise of jurisdiction it already has in deference to a state court resolution of underlying issues of state law. *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Abstention is appropriate only where the issue of state law is uncertain, *Harman v. Forssenius*, 380 U.S. 528 (1965), and where "the delay and expense to which the application of the abstention doctrine inevitably gives rise" can be justified. *England v. Board of Medical Examiners*, 375 U.S. 411, 418 (1964). However, abstention is not automatic whenever a question of state law may be involved. As the Court said in *Baggett v. Bullitt*, 377 U.S. 360, 376-77 (1964), a case in which the Court considered abstention to be unnecessary:

In the bulk of abstention cases in this Court, \* \* \* the unsettled question of state law principally concerned the applicability of the challenged statute to a certain person or a defined course of conduct, whose resolution in a particular manner would eliminate the constitutional issue and terminate the litigation.

This statement reflects the judicial policy of avoiding the adjudication of federal constitutional questions unless they are ripe and are squarely presented by the record.

"The basic question involved in [federal preemption] cases, however, is never one of interpretation of the Federal Constitution but inevitably one of comparing two statutes." *Swift & Co. v. Wickham*, 382 U.S. 111, 120 (1965). Thus we do not have a situation where a state law interpretation by a state court may



eliminate a federal constitutional question. Cf. *Reetz v. Bozanich*, 397 U.S. 82 (1970). There is no contention by Becker, Jones, or Christensen that California law is unclear or ambiguous or that the construction of California law in the state courts will obviate a decision on Rath's federal preemption claim. The California statutes and regulations apply to Rath without question. We think this case is akin to *Harman v. Forssenius*, supra, in which the Court said: "If the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal \* \* \* question, it is the duty of the federal court to exercise its properly invoked jurisdiction. *Baggett v. Bullitt*, 377 U.S. 360, 375-379." We hold that the district court did not abuse its discretion in refusing to abstain.

## II.

In holding 9 CFR 317.2(h)(2) invalid, the district court said:

[The section] is void for its inadequacy to set any recognizable standard upon which any individual may measure his conduct or his compliance with the law by which he must order his personal or business life. 357 F. Supp. at 534.

Rath alleges two bases of error: (1) the validity of the regulation was not put in issue by the parties below and should not have been considered by the district court; and (2) the district court erred on the merits of the issue.

Rule 16 of the Federal Rules of Civil Procedure provides that "[t]he court shall make an order \* \* \*

which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and *such order* when entered *controls the subsequent course of the action* unless modified at the trial to prevent manifest injustice." [Emphasis added.] The pretrial order entered by the court with the consent of the parties in the Becker action does not name as an issue the validity of 9 CFR 317.2(h)(2); nor, for that matter, do the pleadings and motion papers in the Jones action. The first appearance of the issue in the Jones action was at the argument on the motions for summary judgment:

THE COURT: The question is, is the regulation, and that is (h)(1) and (2) and particularly (2), that is 317.2(h)(2), is it a valid regulation.

MR. KEIR [Counsel for Jones]: Well, we don't challenge the validity of (h)(2).

THE COURT: You don't? You don't? I have some serious questions about it.

MR. KEIR: Maybe I should retract that for the record. Frankly, I hadn't considered whether it is valid or not. I merely submit to the court, and this is the position we have taken right along, is that (h)(2) is an innocuous provision.

It was not until the close of the trial of the Becker action that the district judge requested argument on the issue, and by so doing put the issue before the parties.

Ordinarily, issues not squarely presented in the pleadings and motion papers or not preserved in the pretrial order are considered to have been eliminated from an action. See, e.g., *L & E Co. v. United States*

*ex rel. Kaiser Gypsum Co.*, 351 F.2d 880 (9th Cir. 1965); *Fowler v. Crown Zellerbach Corp.*, 163 F.2d 773 (9th Cir. 1947; see also 3 *Moore's Federal Practice* ¶16.19. This is particularly true in a declaratory judgment action, where the court is called upon to adjudicate only those matters as to which the parties ask that their rights be determined. In this case, however, the parties have fully briefed and argued this issue both here and before the district court. In their consolidated post-trial memorandum, Becker and Christensen requested a declaration that 9 CFR 317.2(h)(2) was invalid. Rath does not claim that the court's *consideration* of the issue—as opposed to its *decision* on the issue, with which Rath differs—has resulted in any actual prejudice to it, nor did Rath object in its reply brief in the district court to consideration of the issue. By failing to object, Rath may be deemed to have acquiesced in an expansion of the issues by the court from those set forth in the pretrial order. Furthermore, the issue, as discussed below, is one of “facial” invalidity under the 5th Amendment which does not require a fully developed evidentiary basis for its resolution. Cf. *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947). We note the public importance of this question, and the possibility of review of our judgment herein. Since a controversy presently exists between the parties on the issue, and since the judgment of the district court turned in large part on its resolution of this issue, we proceed to the merits of the controversy.

Although we have some doubts as to the applicability of the “void-for-vagueness” doctrine in its traditional formulation<sup>17</sup> to this non-criminal situation, the parties do not question the doctrine's applicability to this case. However, we need not decide its applicability, since we are of the opinion that the regulation passes muster when the due process standards enunciated by the criminal cases in the economic area are applied to it. There is no claim that 1st Amendment rights are involved, the presence of which would necessitate stricter scrutiny by us. *Smith v. Goguen*, 415 U.S. 566, 572-73 (1974).

The crux of the district court's holding of invalidity can be found in the following [357 F. Supp. at 534]:

What [*United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77 (1932)], *supra*, is telling us is that the *statutory* delegation is viable. It does not give viability to a redelegation that is subject to varying degrees of reasonableness. The statute gives the Secretary the power of definition of “reasonable variations.” The Secretary here has completely failed to accept the duty that can be expressed only in rules and regulations properly promulgated pursuant to federal laws. [Footnote omitted; emphasis in original.]

<sup>17</sup>*Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926):

That the terms of a *penal* statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that

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Neither the statute nor the regulations contain quantitative statements of what variations will be considered reasonable.<sup>18</sup> There is likewise no evidence tending to show how much weight variation is considered reasonable by the trade. In the absence of evidence of how the regulation is applied, the burden rests on the parties challenging the regulation, Becker and Christensen, to show that the regulation is incapable of setting a standard of enforcement on its face.<sup>19</sup> Their challenge fails for two independent reasons, which correspond to the separate rationales underlying the portions of the district court's opinion reproduced supra.

The district court seems concerned with "reasonableness" as a standard for guiding conduct. This standard is of ancient provenance in English and American law and is not obnoxious in itself to the Fifth Amendment of the Constitution. In the ordinary negligence case, for instance, the sole difference between no liability and sizeable penalty in the form of damages may be whether the acts in issue are considered those of a *reasonable* man by a jury long after the fact. A more telling analogy is found in the criminal applica-

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men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. [Emphasis added.]

See also *United States v. Harriss*, 347 U.S. 612, 617 (1954).

<sup>18</sup>Rath offered as evidence a USDA manual purporting to contain the quantitative variations to be permitted by USDA inspectors, which the court excluded as irrelevant and as not having been promulgated by the Secretary of Agriculture under the Wholesome Meat Act by publication in the Federal Register. Rath does not urge this ruling as error, and we shall not comment on it. Except for this manual, however, Rath concedes that the quantitative scope of "reasonable variations" recognized by the Secretary is nowhere set forth in any writing.

<sup>19</sup>*United States v. National Dairy Products Corp.*, 372 U.S. 29, 32-33 (1963).

tion of the Sherman Act, 15 USC, §1 et seq. The English courts distinguished legal from illegal contracts restraining trade by whether the restraint imposed was reasonable. *Mitchel v. Reynolds*, 1 P. Williams 181, 24 Eng. Rep. 347 (King's Bench, 1711); see discussion in *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *mod. and aff'd.*, 175 U.S. 211 (1899); and *Standard Oil Co. v. United States*, 221 U.S. 1, 51 (1911). *Standard Oil*, supra, construed the prohibition of the Sherman Act against "[Any] contract, combination \* \* \*, or conspiracy, in restraint of trade \* \* \*," to apply only to those restraints which are unreasonable as understood in the common law. When the criminal application of the Sherman Act was challenged, in *Nash v. United States*, 229 U.S. 373 (1912), on the ground that "the crime defined by the statute contains in its definition an element of degree as to which estimates may differ," Mr. Justice Holmes, speaking for the Court, said:

But apart from the common law as to restraint of trade thus taken up by the statute the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. \* \* \* We are of opinion that there is no constitutional difficulty in the way of enforcing the criminal part of the act. 229 U.S. at 378-79.

See also *United States v. Ragen*, 314 U.S. 513, 523-24 (1942). More recently, the Supreme Court upheld against a constitutional challenge a criminal proceeding



under §3 of the Robinson-Patman Act, 15 USC, §13a, which makes it a crime to sell goods at “unreasonably low prices for the purpose of destroying competition or eliminating a competitor.” *United States v. National Dairy Corp.*, 372 U.S. 29, 34-36 (1963).<sup>20</sup> We conclude, therefore, that the regulation, which permits “reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices,” has not been shown by the parties claiming its invalidity to be impossible of application without depriving those to whom it is applied fair notice of the practices which are not within the permission of the regulation. The nature of the recognized variations is clearly set forth; Becker, Jones, and Christensen have not alleged that those subject to the regulation, such as Rath,<sup>21</sup> could not perceive the conditions under which the regulation would permit reasonable variations in weight to be recognized. The characterization of the recognized variations as “reasonable” is not constitutionally infirm in itself, as the cases show.

<sup>20</sup>The Court did not uphold the statute on its face, but only as applied to the acts charged in the indictment. The Court did, however, distinguish the case from *United States v. Cohen Grocery Co.*, 255 U.S. 81 (1921), in which a statute proscribing “any unjust or unreasonable rate or charge” was invalidated. The Court saved §3 by finding that the statute made clear reference to the nature of the conduct prohibited, i.e., that which was intended to destroy competition, etc. 372 U.S. at 35.

<sup>21</sup>9 CFR 302.1(a) provides:

(a) Inspection under the regulations in this subchapter [which includes 317.2(h)(2)] is required at:

(1) Every establishment \* \* \* in which any products of \* \* \* carcasses of livestock \* \* \* are prepared for transportation or sale as articles of commerce, which are intended for use as human food.

Our conclusion is confirmed by the holding of the Supreme Court in *Parker v. Levy*, 417 U.S. 733 (1974), that Article 134 of the Uniform Code of Military Justice, which punishes “[a]ll disorders and neglect to the prejudice of good order and discipline in the armed forces,” is not void for vagueness. See also *Ricci v. United States*, 507 F.2d 1390 (Ct. Cl. 1974). Application of the regulation, as gauged on this record, does not offend the due process clause of the 5th Amendment, as it has not been shown that the regulation fails to give fair notice of the variations to be permitted under it.

The second prong of the district court’s criticism of the regulation is that it constitutes an impermissible redelegation to USDA field inspectors of the authority granted by Congress to the Secretary to determine what variations caused by gain or loss of moisture, etc., were to be permitted. This conclusion is error, as the legislative history and precedent demonstrate.

In enacting the Wholesome Meat Act of 1967, Congress made additions to the statutory framework underlying federal meat inspection programs and standards. In particular, Congress created a series of definitions modeled on the definitions used in the Food, Drug, and Cosmetic Act, 21 USC, §301 et seq. In S. Rep. No. 799, 90th Cong., 1st Sess.,<sup>22</sup> the Committee said with respect to Sec. 1(n) of S. 2147, which became 21 USC, §601(n), the statutory basis of the questioned regulation:

(n) *Misbranded*.—The definition of this term not heretofore used in the Meat Inspection Act,

<sup>22</sup>2 U.S. Code, Cong. and Admin. News, 90th Cong., 1st Sess., pp. 2188-2213 (1967).

is discussed in connection with section 12. It is based on the definition of the same term in the Federal Food, Drug, and Cosmetic Act and is identical except that—

In new section 1(n)(5) the introductory phrase is slightly different in that it refers to “other container” besides packages and requires a label “showing” rather than containing” specified information; and in the proviso, reasonable variations and exemptions “may” instead of “shall” be allowed by the Secretary of Agriculture instead of the Secretary of Health, Education, and Welfare. Also an internal reference to a clause is made in different terms than in the Federal Food, Drug, and Cosmetic Act.

\* \* \* \*

It is therefore proper for us to consider the history and construction of the Food, Drug, and Cosmetic Act prior to 1967 in interpreting the scope of the Secretary’s power to promulgate regulations.

In *United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77 (1932), the Supreme Court had occasion to construe the Food and Drug Act and regulations thereunder, as they were in force at that time. The relevant portion of the Act provided:

[A]n article of goods shall be deemed misbranded—

\* \* \* \*

Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: *Provided, however,* That reasonable variations shall be per-

mitted and tolerances and also exemptions as to small packages shall be established, by rules and regulations made in accordance with \* \* \* this Act.

The regulation stated:

(i) The following tolerances and variations from the quantity of the contents marked on the package shall be allowed:

(1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing in compliance with good commercial practice.

\* \* \* \*

(3) Discrepancies in weight or measure, due exclusively to differences in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

Discrepancies under classes (1) and (2) of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case.

The resemblance between the present statute and regulation and the statute and regulation in force in 1932 is apparent.

The Court held that the substantive standard created by the Act was that packages be marked plainly and conspicuously with their weights, and that the statutory proviso gave the involved Secretaries the administrative



authority to permit reasonable variations from this hard and fast rule. The Court continued [287 U.S. at 84]:

Moreover, the practical and long continued construction of the executive departments charged with the administration of the act and with the duty of making the rules and regulations therein provided for, has been in accordance with the view we have expressed as to the meaning of the section under consideration. The rules and regulations, as amended on May 11, 1914, deal with the entire subject in detail under the recital, "(i) The following tolerances *and variations* [italics supplied] from the quantity of the contents marked on the package shall be allowed: . . ." Then follows an enumeration of discrepancies due to errors in weighing which occur in packing conducted in compliance with good commercial practice; due to differences in capacity of bottles and similar containers, resulting from unavoidable difficulties in manufacture, etc.; or in weight due to atmospheric differences in various places, etc. These regulations, which cover variations as well as tolerances and exemptions, have been in force for a period of more than eighteen years, with the silent acquiescence of Congress.

The Court did not question the authority of the Secretary to promulgate the regulation. In the forty-two years since the *Shreveport Grain* case Congress has not changed its delegation of authority to the Secretary to "permit reasonable variations," nor have the regulations promulgated expressly under that authority included any quantitative expressions of the variations to be permitted.

The question, therefore, is: Has the Secretary failed to heed the intent of Congress in giving him authority to permit reasonable variations by declining to put numerical limits on the variations he and his representatives will permit in the enforcement of the substantive standard of the Act? In the Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, Congress reenacted the provisions of the prior Act in substantially identical terms to those before the Court in *Shreveport Grain*.<sup>23</sup> It has been held that Congress gives a regulation the force and effect of law by reenactment of the statutory provision to which it pertains. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U.S. 110 (1939). We note also the presumption that reenactment of a statutory provision by Congress without significant change indicates its approval of prior judicial interpretation of that provision. *United States v. Douglas Aircraft Co.*, 510 F.2d 1387 (CCPA 1975). Becker, Jones, and Christensen have adduced nothing to overcome the conclusion that the regulation is a valid exercise of the authority delegated to the Secretary by Congress. The regulation must be presumed valid, and the burden is on those contending its invalidity to persuade us otherwise. Forty-two years of Congressional silence is strong evidence that Congress has acquiesced in the Secretary's interpretation of the scope

<sup>23</sup>Sec. 403. A food shall be deemed misbranded—

\* \* \* \*

(e) If in package form unless it bears a label containing \* \* \* (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the Secretary.

of his powers. See *Flood v. Kuhn*, 407 U.S. 258, 283 (1972); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969). We do not, for the above reasons, concur in the district court's analysis of *Shreveport Grain*, and hold that the district court erred in finding 9 CFR 317.2(h)(2) invalid.

### III.

The central issue in this litigation is whether sections of the California statute and regulations promulgated thereunder are preempted by the Wholesome Meat Act of 1967 and 9 CFR 317.2(h)(2). The district court based its holding of preemption on its finding that the statistical variations allowed by California from the accurate weight standard imposed by 21 USC, §601(n)(5), in the absence of valid regulations permitting reasonable variations thereunder, created a net weight labeling standard "different than" the federal standard. We agree with the holding, but not with the reasoning on which it was based.

"Our principal function is to determine whether, under the circumstances of this case [the state regulations and] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the Wholesome Meat Act and delegating to the Secretary the power to make regulations thereunder. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The inquiry in this case will follow the lines set forth in *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963):

The principle to be derived from our decisions is that federal regulation of a field of commerce

should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained.

21 USC, §678, was enacted as part of the Wholesome Meat Act of 1967, Pub. L. 90-201, §408, 81 Stat. 600. We are of the opinion that in it "Congress has unmistakably so ordained." Accord, *Armour and Company v. Ball*, 468 F.2d 76 (6th Cir. 1972). This conclusion follows from the clear language and legislative history of 21 USC, §678. The first part of the section reads in relevant part:

Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter, which are *in addition to, or different than those made under this chapter may not be imposed by any State \* \* \**, except that any such jurisdiction may impose record-keeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, *labeling*, packaging, or ingredient *requirements in addition to, or different than*, those made under this chapter may not be imposed by any State \* \* \* with respect to ~~articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter~~ \* \* \*. [Emphasis added.]



The report of the Senate Committee, S. Rep. No. 799, 90th Cong., 1st Sess., states:<sup>24</sup>

The committee feels that Federal standards must be required of all meat and meat food products sold for human consumption in this country.

\* \* \* \*

However, the committee wants it clearly understood that the requirements on wholesomeness, additives, labeling, and the other Federal regulations are not to be compromised and must be at least equal to Federal standards.

\* \* \* \*

Section 408 [codified at 21 USC, §678] would exclude States \* \* \* from imposing marking, labeling, packaging, or ingredient requirements in addition to or different than those under the Federal Meat Inspection Act for articles prepared in accordance with title I of the act \* \* \*.

This language clearly shows the intent of Congress to create a uniform national labeling standard, under the definitions set forth in the Wholesome Meat Act, including the definition of "misbranding" in §601(n). The express language of §678 implements this clear Congressional intent.

In the absence of regulations under the Act the statutory labeling<sup>25</sup> standard under the Act is that

<sup>24</sup>2 U.S. Code Cong. and Admin. News, 90th Cong., 1st Sess., 2191, 2207 (1967).

<sup>25</sup>Jones' argument that California imposed no "labeling" requirements, but rather sought to prevent "misbranding" under Cal. Bus. and Prof. Code §12211, is strained. 21 USC §601(n) read as a whole, defines violation of its "labeling" requirements as "misbranding." As we hold below, the federal standards, which include definitions of terms, prevail over conflicting State standards.

the label reflect "accurate" weight, as the district court held. 9 CFR 317.2(h)(2) adds to this federal standard the condition that "reasonable variations caused by loss or gain of moisture during the course of good distribution practices \* \* \* will be recognized." The California statutes and regulations must impose such a standard of labeling on Rath or they are preempted by federal law as requiring weight information on labels "different than" that required by federal law.

Cal. Bus. and Prof. Code §12211 establishes the following standard: "that the *average* weight or measure of the packages or containers in a lot of any such commodity sampled shall not be *less*, at the time of sale or offer for sale, than the net weight or measure stated upon the package." (Emphasis added.) This section also provides for the promulgation of regulations to govern the sampling and weighing procedures. The California regulations, the district court concluded, provide only for a statistical variation from the absolute accurate weight and make no reference to loss of moisture from the packages of bacon (or other products that lose moisture, for that matter) experienced between the time the bacon is weighed in the plant and the time that California inspectors weigh the bacon at the retail store. We agree with the district court that Cal. Bus. and Prof. Code §12211 and 4 Cal. Admin. Code, ch. 8, subch. 2, Art. 5, impose labeling standards "different than" those under federal law and may not be enforced.

Jones, Becker, and Christensen claim that this holding infringes on the legitimate interests of the State of California protecting its citizens from short-weight meat products. We cannot agree. Christensen and Becker

recognized the true situation in their brief: "Christensen and Becker submit that by [21 USC, §678] Congress sanctioned the adoption by the states of laws (statutes and regulations) which impose the same *standard* required by the Wholesome Meat Act \* \* \* and which are enforced by means of state enforcement procedures. (Emphasis in original.) The concluding portion of §678 reads in relevant part as follows:

\* \* \* but any State \* \* \* may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment \* \* \*. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

Our holding does not diminish the Congressional grant in §678 to the States of enforcement jurisdiction concurrent with the Secretary over misbranded articles outside federally inspected establishments, *if the States do not impose labeling and other requirements "in addition to or different than" the federal standards when exercising their concurrent jurisdiction.* We have merely held that California cannot exercise its concurrent jurisdiction through the particular standards established by §12211 and Art 5. California is free

to enact other statutes and regulations which do not offend §678. It must be further understood that the only matters at issue are net weight labeling standards; our judgment herein does not pertain to other matters which are or may be regulated by the State of California.

#### IV.

Rath urges as error the holding of the district court that the federal net weight standard set by 21 USC, §601(n)(5), "can be applied to packages of meat or meat food products at the ultimate end of a meat processor's distribution system—the retail store." Implicit in this holding is that California may exercise the concurrent enforcement jurisdiction permitted it by 21 USC, §678, by the imposition of appropriate standards through the inspection of packages at the supermarket.

Rath's position is at odds with the intent of the Wholesome Meat Act and with the grant of concurrent enforcement jurisdiction to the States. 21 USC, §602, states that "It is essential in the public interest that the health and welfare of *consumers* be protected by assuring that meat and meat food products *distributed to them* are wholesome, not adulterated, and properly marked, labeled, and packaged." (Emphasis added.) 21 USC, §624, gives the Secretary the power to promulgate regulations governing the storage and handling of meat and meat food products "to assure that such articles will not be \* \* \* misbranded *when delivered to the consumer.*" (Emphasis added.)



The emphasized portions make it clear to us that Congress intended to continue the protection provided under the Wholesome Meat Act to the point at which the consumer receives the meat and meat food products subject to the Act, i.e., at the retail food store level.<sup>26</sup>

21 USC, §673(a) provides for federal seizure of misbranded meat and meat food products which are "held for sale [i.e., in a retail store] in the United States after \* \* \* transportation [in commerce]," and §673(b) indicates that federal seizure does not "derogate from authority for condemnation or seizure conferred by \* \* \* other laws." The concurrent jurisdiction granted by 21 USC, §678, to enforce appropriate State standards outside of federally inspected establishments would be a nullity if it were to be construed to prevent State enforcement at a level of distribution which Congress clearly intended to be subject to *non-exclusive* federal regulation.

Rath, however, argues that the federal net weight standard requires that the label be accurate only when the product leaves the establishment, relying on 21 USC, §607(b).<sup>27</sup> Accordingly, says Rath, the State may not require conformance with the federal standard of accurate weight, with reasonable variations, etc., considered, past that point. Such an argument renders meaningless the allowance of reasonable variations for

<sup>26</sup>See also, 9 CFR 317.2(b), promulgated under 21 USC, §601(n)(6), which provides in part:

[Any label term must be] likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

<sup>27</sup>"(b) All \* \* \* meat and meat food products inspected at any establishment under the authority of this subchapter \* \* \* shall *at the time they leave the establishment* bear \* \* \* the information required under paragraph (n) of section 601 of this title." (Emphasis added.)

gain or loss of moisture *during the course of good distribution practices*. Why would the federal scheme consider distribution practices to be relevant at all if the federal net weight labeling standard applied only at the point at which distribution of the product commenced? We cannot attribute such a restrictive reading to §607(b). Rath's objections are met by the reasonable variations allowance; whatever weight variation results from gain or loss of moisture occurring in the chain of distribution from packing plant to retail store *must*, under 9 CFR 317.2(h)(2), be taken into account in determining whether the net weight labeling of a package at retail complies with the federal standard.

## V.

After the district court filed its order enjoining the enforcement of Cal. Bus. and Prof. Code §12211 and 4 Cal. Admin. Code ch. 8, subch. 2, Art. 5, Christensen promulgated a new regulation, Art. 5.1, to

\* \* \* apply only during the proceedings [of the instant case]. This Article is adopted as a temporary authority to protect California wholesalers, retailers, and consumers against short weight packages of meat and meat products \* \* \*.

The district court refused to modify its order to enjoin the enforcement of Art. 5.1 and Cal. Bus. and Prof. Code §12607, the alleged statutory authority for the regulation. Rath requests us to enlarge the declaration and injunction to hold invalid and enjoin the enforcement of these provisions as well.<sup>28</sup>

<sup>28</sup>Rath did not appeal separately from the denial of its motion to amend the judgment. The issue was preserved by Rath's initial notice of appeal, since the injunction granted (This footnote is continued on next page)

§12607 provides:

Whenever a consumer commodity is offered for sale, exposed for sale, or sold without a statement of net quantity appearing thereon \* \* \*, the sealer shall in writing order the commodity off sale and require that a correct statement of net quantity be placed on the commodity before the same may be released by the sealer.

This section, standing by itself, is innocuous if “net quantity” is a designation of contents by weight which is not “in addition to or different than” the federal net weight labeling requirements. Art. 5.1 shows that the interpretation of “net quantity” enforced in California is “different than” the federal standard:

2940.1 *Package Inspection.* (a) Each sealer of weights and measures shall, within his county, inspect packages of meat and meat products and poultry and poultry products to determine whether the label weight stated on the package is accurate at time of inspection.

(b) The determination of accuracy shall be made by weighing all of the usable product within the container, exclusive of wrappers and packing substances.

(c) As an alternative procedure to the procedure stated in subsection (b), the sealer of weights

by the district court was narrower in scope than the relief requested by Rath. Rath's notice of appeal specifically noted the limitation of relief. We also note that the district court, 357 F. Supp. at 533, relied on Becker, Jones, and Christensen's citation of §12211 as the primary statutory authority in fashioning the remedy. By changing their statutory basis of authority, they scarcely should argue that Rath has the burden of foreseeing what regulations they will use next.

and measures shall establish an accurate tare weight for the containers within a lot of packages and weigh each of the inspected packages. He shall:

(1) Remove 3 packages from the lot at random and weigh each of the unopened packages;

(2) Remove from each of the 3 containers all of the usable product, exclusive of wrappers and packing substances; and

(3) Determine the tare weight for each of the 3 packages separately by subtracting the weight of the usable product from the gross weight.

He shall weigh separately each of the packages in the lot to be inspected and apply as a tare weight for purposes of the lot the lowest tare weight obtained by the above procedure.

(d) For purposes of the procedure specified in subsection (c), a lot is defined as a group of packages assembled in one place, of the same product and brand, in apparently identical containers, bearing the same statement of weight.

It is clear beyond cavil that Art. 5.1 makes *no* allowance for variations from accurate weight *whatever*. Since the federal standard, by virtue of 9 CFR 317.2 (h)(2), requires recognition of reasonable variations due to gain or loss of moisture, etc., Art. 5.1 is preempted by the federal standard and may not be enforced. To the extent that §12607 is interpreted to permit a definition of “net quantity” which does not recognize the reasonable variations allowed by the



federal standard, it is likewise preempted and may not be enforced.<sup>20</sup> The applicability of Art. 5.1 only during the "proceedings" of this case does not deter us from considering its enforcement improper, since we have no control over the interpretation of its period of applicability either administratively or by a state court except by assuring by injunction that Art. 5.1 will not be enforced at all.

## VI. CONCLUSION

In recapitulation we hold:

(1) that the district court had jurisdiction over the subject matter of this case, personal jurisdiction being conceded;

(2) that the district court erred in invalidating 9 CFR 317.2(h)(2);

(3) that the Wholesome Meat Act of 1967, 21 USC, §601 et seq., and 9 CFR 317.2(h)(2) preempt Cal. Bus. and Prof. Code §12211 and 4 Cal. Admin. Code ch. 8, subch. 2, Art. 5,

<sup>20</sup>Section 12607 is not saved by Cal. Bus. and Prof. Code §12613, which provides:

If any provision of this chapter is less stringent or requires information different from any requirement of Section 4 of the act of Congress entitled "Fair Packaging and Labeling Act" (P.L. 89-755; 80 Stat. 1296, 15 U.S.C. 1451-1461) or of any regulation promulgated pursuant to such act, the provision shall be inoperative to the extent that it is less stringent or requires information different from any such federal requirement, in which event each such federal requirement is a part of this chapter.

No California standard, even if of equal or greater stringency than the federal standard, may be enforced if it is *different* from the federal standard. As enforced in Art. 5.1, §12607 is different from the Wholesome Meat Act standard, whether less stringent or not. The Fair Packaging and Labeling Act is, of course, not relevant to this case.

and that Becker, Jones, and Christensen were properly enjoined from enforcing those sections;

(4) that the district court correctly held that state standards not in addition to or different than the federal net weight labeling standard may be enforced by appropriate State procedures at the retail level; and

(5) that 4 Cal. Admin. Code ch. 8, subch. 2, Art. 5.1, is preempted by federal law, that Cal. Bus. and Prof. Code §12607 is preempted by federal law to the extent indicated in part V, *supra*, and that their enforcement should be enjoined.

Accordingly, the judgment of the district court is affirmed in part, reversed in part, and the case is remanded for entry of an amended order in conformance with this opinion.

[357 Fed. Supp. 529-36]

The Rath Packing Company, a corporation, Plaintiff and Counter-Defendant, v. M. H. Becker as Director of the County of Los Angeles Department of Weights and Measures, Defendant, C. B. Christensen as Director of Agriculture of the State of California, Intervenor.

The Rath Packing Company, a corporation, Plaintiff, v. The People of the State of California, Joseph W. Jones as Director of the County of Riverside Department of Weights and Measures, Defendants. Civ. A. Nos. 72-607-R, 72-608-R. United States District Court, C. D. California. April 3, 1973.

MEMORANDUM OPINION  
AND ORDER

REAL, District Judge.

These matters have been consolidated for decision after trial of Case No. 72-607-R, and hearing of cross-motions for summary judgment in case No. 72-608-R. The facts of both cases have much commonality with little or no dispute of the facts necessary to disposition of both cases.

Plaintiff, The Rath Packing Company, (hereafter Rath), is a meat processor subject to inspection pursuant to the terms of the federal Wholesome Meat Act of 1967, 21 U.S.C. § 601 et seq.

Defendants M. H. Becker (hereafter Becker) and Joseph W. Jones (hereafter Jones) are Directors of County Department of Weights and Measures of Los Angeles and Riverside Counties respectively. C. B. Christensen, as Director of Agriculture of the State of California has heretofore been granted leave to intervene in the Becker action and has participated in presenting the defense in that action.

The controversy arises out of the actions of Becker and Jones through their respective deputies of ordering off-sale meat products delivered by Rath to retail stores found to be short of the weight stated on the label. Determination of short-weight has been made in each case by the application of the provision of Title 4, California Administrative Code, Chapter 8, subchapter 2, Article 5.

Fundamental to resolution of the validity of Becker and Jones' actions is a determination of the reach of the federal Wholesome Meat Act of 1967, 21 U.S.C.

§ 601 et seq., *i.e.*, preemption by the federal government of the regulation of meat and meat products.

The federal Wholesome Meat Act of 1967 was enacted by Congress with the finding that:

“ . . . Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers.” 21 U.S.C. § 602.

A reading of the statutory scheme together with the legislative history<sup>1</sup> demonstrates clearly, in the context of our concern here, that Congress intended to broaden federal regulation of meat and meat food products to cope with adulteration, unwholesomeness and misbranding for the welfare of consumers.

The essence of the controversy here is found in Congressional enactment of Title 21, United States Code, Section 601(n) which provides:

“(n) The term ‘misbranded’ shall apply to any . . . meat or meat food product under one or more of the following circumstances:

(5) if in a package or other container unless it bears a label showing . . . (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count: Provided,

<sup>1</sup>U.S. Code Congressional and Administrative News, 90th Congress, First Session, 1967, pages 2188-2213.



That under Clause (B) of this subparagraph (5), reasonable variations may be permitted, . . . by regulations prescribed by the Secretary.”

Rath claims that it meets the criteria of 21 U.S.C. § 601(n)(5) when its products are considered under the application of regulations published by the Secretary of Agriculture in 9 C.F.R. § 316.1 et seq. and 21 U.S.C. § 607(b).

21 U.S.C. § 607 (b) provides in its pertinent part:

“(b) All . . . meat and meat food products inspected at any establishment under the authority of this subchapter . . . shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers . . . the information required under paragraph (n) of section 601 of this title.”

Rath argues that section 607(b) limits the inquiry of accurate weight to the time meat or meat food products leave a processor's plant under federal inspection. Rath here argues for too much. To complete the regulatory scheme and maintain continuing enforcement, Congress gave federal meat inspectors the power of seizure of adulterated or misbranded meat or meat food products at any level of distribution. 21 U.S.C. § 673 makes clear that the provisions of section 601(n) (1-12) can be applied to packages of meat or meat food products at the ultimate end of a meat processor's distribution system—the retail store.

The defendants so argue—but they fall short in the recognition of what it is they are permitted to do by the federal Wholesome Meat Act of 1967. The provisions of 21 U.S.C. § 679 limit the state

in clear and unequivocal language. Therein, the states are admonished that “. . . [M]arking, labeling, packaging or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter. . . .” Rath is clearly within these requirements.

Defendants defend their acts and rely—as the source of their authority and practice—upon state statutes. We now proceed to analyze that state statutory scheme to determine whether it meets the limitations of 21 U.S.C. § 678 when applied to the products of Rath.

Defendants cite as their primary source California Business and Professions Code section 12211 which provides in its pertinent part:

“§ 12211. Weighing or measuring commodities sold or being delivered; rules and regulations; off sale order; evidence. Each sealer shall . . . weigh or measure packages, containers or amounts of commodities sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented. . . .

The director is hereby authorized and directed to adopt and promulgate necessary rules and regulations governing the procedures to be followed by sealers . . . in determining whether any package or container or a lot of such packages or containers complies with the provisions of this section.

\* \* \* \*

Whenever a lot or package of any commodity is found to contain . . . a less amount than

that represented, the sealer shall in writing order same off sale. . . .”

Following the direction of the California legislature, the Director of Agriculture of the State of California has published in Title 4, California Administrative Code, Chapter 8, subchapter 2, Article 5 (hereafter Article 5) a comprehensive procedure for testing commodities to determine their compliance with California Business and Professions Code section 12211. In a detailed step by step process, the sealer is led to the determination of whether or not the commodities in question “contain a lesser amount than represented”. The procedure is a statistical determination based upon normal and proven statistical standards. As such, the result can be no better than the objective, and the stated objective of Article 5 is to determine by sampling techniques the qualification of a lot of commodities to the requirements of section 12211, *i.e.*, that the quantity represented on the label is what the package contains. These techniques are questioned by Rath as contravening the prohibition against adding to or differing from the labeling requirements of the federal Wholesome Meat Act of 1967. Defendants argue validity, urging that preemption by the federal government is limited by 21 U.S.C. § 678 when it provides:

“ . . . , but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing distribution . . . of any such articles which are adulterated or misbranded and are outside of such an establishment. . . .”

It is clear in the provisions for concurrent jurisdiction outside an inspected plant that such actions as are undertaken by states in the regulation of meat and meat food products must be *consistent* with the requirements of the federal Wholesome Meat Act of 1967. That Act has spoken upon the subject of misbranding—and more particularly when misbranding is related to comparison of the label with contents as provided in 21 U.S.C. § 601(n)(5) in this language:

“(n) The term ‘misbranded’ shall apply to any . . . meat or meat food product . . .

\* \* \*

(5) if in a package or other container it bears a label showing . . . (B) an accurate statement of quantity . . . in terms of weight . . . : Provided, That under clause (B) of this subparagraph (5) reasonable variations may be permitted . . . by regulations prescribed by the Secretary.”

To implement subsection (5), the United States Secretary of Agriculture published rules and regulations in Title 9, Code of Federal Regulations. In section 317.2(h)(2) the Secretary provides:

“(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.”

California Article 5 just does not meet this federal standard. Nowhere in the measuring processes set forth



therein in detail is any consideration given to the possible "loss . . . of moisture during the course of good distribution practice." The measure of Article 5 is "absolute" as determined by accepted statistical methods and, as such, erroneously encroaches upon the standards provided by the federal Wholesome Meat Act of 1967.

Defendants argue, however, that section 317.2(h)(2) is void for vagueness; that, therefore, we are left with the absolute standard, "an accurate statement of . . . weight". Though valid, this argument does not end the inquiry in favor of state action. California Article 5—though measuring the absolute provided in California Business and Professions Code section 12211—applies a statistical "averaging" concept for the sealer to make the final determination of whether or not packages in violation should be ordered "off-sale". The federal Wholesale Meat Act of 1967 does not give state legislatures or state officers—even in the grant of concurrent enforcement jurisdiction—the right to substitute their judgment of what variances, either plus or minus come within the absolute standard of "an accurate statement of . . . in terms of weight." 21 U.S.C. § 601(n)(5)(B). Plaintiff argues the validity of 9 C.F.R. § 317.2(h)(2), citing the Supreme Court sanction of a similar statute in *United States v. Shreveport Grain & Elevator Company*, 287 U.S. 77, 53 S.Ct. 42, 77 L.Ed. 175 (1932).

But *Shreveport, supra*, does not reach the regulation under consideration here. In *Shreveport, supra*, the primary standard was given vitality because the "rules and regulations . . . deal with the *entire subject in detail* under the recital, '(i) the following tolerances

and variations' . . . ." (Emphasis added.) The Court then goes on to say at page 84, 53 S.Ct. at page 44:

" . . . Then follows an enumeration of discrepancies due to errors in weighing which occur in packing conducted in compliance with good commercial practice; . . . ."

What *Shreveport, supra*, is telling us is that the *statutory* delegation is viable. It does not give viability to a redelegation that is subject to different enforcement resulting in varying degrees of reasonableness. The statute [21 U.S.C. § 601(n)(5)] gives the Secretary the power of definition of "reasonable variations". The Secretary here has completely failed to accept the duty that can be expressed only in rules and regulations properly promulgated pursuant to federal law.<sup>2</sup> Section 317.2(h)(2) is void for its inadequacy to set any recognizable standard upon which any individual may measure his conduct or his compliance with the law by which he must order his personal or business life.<sup>3</sup>

Conceding the invalidity of section 317.2(h)(2) to defendants, they now argue that the state is free to set its own standards of "reasonable variations" citing *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 83 S.Ct. 1210, 10 L.Ed.2d 248, rehearing denied, 374 U.S. 858, 83 S.Ct. 1861, 10 L.Ed.2d 1082. The error of such dependence on *Florida Lime, supra*, is evidenced by the recognition by the Supreme

<sup>2</sup>5 U.S.C. §§ 551-559.

<sup>3</sup>Under the regulation as it is written one meat inspector may conclude that x% loss of moisture can be expected. Given the same factual context, another meat inspector may come to the conclusion that y% loss of moisture is reasonable. Delegation of "administrator's function" has never included giving each enforcement officer the "keys to the jailhouse".

Court, beginning at page 142, 83 S.Ct. 1210, that Congress had not foreclosed activity by the states where it can be reconciled with federal regulation. Here the defendants attempt to justify the California statutory scheme by a misunderstanding that labeling, qua labeling, is what the federal Wholesome Meat Act of 1967 is all about and that California's statute is aimed at misbranding. This conclusion is erroneous for two reasons:

1. Congress has defined "misbranding".
2. "Misbranding" has no meaning except insofar as it describes a departure from the labeling description of a commodity within a package.<sup>4</sup>

The Court is aware of the admonition in *Florida Lime, supra*, in measuring preemption when the Supreme Court says at page 142, 83 S.Ct. at page 1217:

"The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained."

The Congress here has left no doubt. It is *the* provisions of *the* federal Wholesome Meat Act of 1967 that are applicable to mislabeling or misbranding that must be applied. Neither state legislatures nor state officers can add or subtract from those definitions. If administrative definition of "reasonable variances" is desirable, it is the United States Secretary of Agricul-

<sup>4</sup>Each of the twelve categories of misbranding described in 21 U.S.C. § 601(n) refers to, in some way, a label. Common sense tells us that mislabeling and misbranding are synonymous terms.

ture who must speak. When he fails to speak or misspeaks his authority, the state cannot substitute its voice. Defendants here do not, in any sense of the word, pretend to be applying federal statutory standards. The enforcement of California Business and Professions section 12211 and its implementation in California Administrative Code Article 5 exceeds the concurrent enforcement rights of the state and its officers.

This conclusion should not in any way be taken to mean that state officers (sealers) cannot continue their stated mission to protect consumers of their respective jurisdictions. They have available to them a federal statutory scheme which, when properly executed by state or federal officers, secures to the American homemaker the assurance that expected wholesomeness and value is received for each consumer dollar spent. That the evidence here shows the United States Department of Agriculture may have abdicated some of its protective duty, does not justify the application of a *different* labeling requirement by the state of California and its officers.

The claimed exemptions by Rath of its meat and meat food products do not—if beyond the preemption standards recognized herein—need resolution to fully determine the controversy between the parties.

In case No. 72-607-R judgment shall be entered for plaintiff.

In case No. 72-608-R the motion for summary judgment of defendant is denied. The motion for summary judgment of plaintiff is granted.

Accordingly,

It is ordered:



1. That defendants and intervenor in case No. 72-607-R, and defendants in case No. 72-608-R, together with their respective deputies, inspectors, officers, agents, servants, employees, attorneys and other persons in active concert or participation with them, and each of them, are restrained and enjoined permanently from applying the provisions of California Business and Professions Code section 12211 and/or the provisions of Title 4, California Administrative Code, Chapter 8, subchapter 2, Article 5, to articles prepared and marketed by plaintiff under United States Department of Agriculture's inspection in accordance with the requirements of the federal Wholesome Meat Act of 1967 [21 U.S.C. § 601 et seq.].

2. The Court reserves the continuing jurisdiction to make any modification to this injunction upon proper application by any party, as the ends of justice may require.

## **APPENDIX B.**

### **Constitutional and Statutory Provisions Involved**

#### **Constitution of the United States, Article VI, clause 2.**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

#### **Amendment X.**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

#### **Wholesome Meat Act, 81 Stat. 584, 21 United States Code § 601 et seq.**

##### **§ 601. Definitions.**

As used in this chapter, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "Secretary" means the Secretary of Agriculture of the United States or his delegate.

\* \* \* \*

(h) The term "commerce" means commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

(n) The term "misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

\* \* \* \*

(4) if its container is so made, formed, or filled as to be misleading;

(5) if in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Secretary;

\* \* \* \*

(o) The term "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(p) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

§ 602. Congressional statement of findings.

Meat and meat food products are an important source of the Nation's total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated,

and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary and cooperation by the States and other jurisdictions as contemplated by this chapter are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

§607. Labeling, marking, and container requirements.

(a) Labeling receptacles or coverings of meat or meat food products inspected and passed; supervision by inspectors.

When any meat or meat food product prepared for commerce which has been inspected as herein-



before provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this subchapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of this subchapter; and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this subchapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) Information on articles or containers; legible form.

All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this subchapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Secretary may require, the information required under paragraph (n) of section 601 of this title.

(c) Labeling: type styles and sizes; definitions and standards of identity or composition; standards of fill of container; consistency of Federal and Federal-State standards.

The Secretary, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or animals subject to this subchapter or subchapter II of this chapter; (2) definitions and standards of identity or composition for articles subject to this subchapter and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, and there shall be consultation between the Secretary and the Secretary of Health, Education, and Welfare prior to the issuance of such standards under either Act relating to articles subject to this chapter to avoid inconsistency in such standards and possible impairment of the coordinated effective administration of these Acts. There shall also be consultation between the Secretary and an appropriate advisory committee provided for in section 661 of this title, prior to the issuance of such standards under this chapter, to avoid, insofar as feasible, inconsistency between Federal and State standards.

(d) Sales under false or misleading name, other marking or labeling or in containers of misleading form or size; trade names, and other marking, labeling, and containers approved by Secretary.

No article subject to this subchapter shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading

form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.

(e) Use withholding directive respecting false or misleading marking, labeling, or container; modification of false or misleading matter; hearing; withholding use pending proceedings; finality of Secretary's action: judicial review: application of section 194 of Title 7.

If the Secretary has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this subchapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking; labeling or container does not accept the determination of the Secretary, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the United States court of appeals for the circuit in which such person, firm, or corporation has its principal place of business or to the United States Court of Appeals for the District of Columbia Cir-

cuit. The provisions of section 194 of Title 7 shall be applicable to appeals taken under this section.

§624. Storage and handling regulations; violations; exemption of establishments subject to non-Federal jurisdiction.

The Secretary may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, or importing, such articles, whenever the Secretary deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited. However, such regulations shall not apply to the storage or handling of such articles at any retail store or other establishment in any State or organized Territory that would be subject to this section only because of purchases in commerce, if the storage and handling of such articles at such establishment is regulated under the laws of the State or Territory in which such establishment is located, in a manner which the Secretary, after consultation with the appropriate advisory committee provided for in section 661 of this title, determines is adequate to effectuate the purposes of this section.

§ 678. Non-Federal jurisdiction of Federally regulated matters; prohibition of additional or differ-



ent requirements for establishments with inspection services and as to marking, labeling, packaging, and ingredients; recordkeeping and related requirements; concurrent jurisdiction over distribution for human food purposes of adulterated or misbranded and imported articles; other matters.

Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter, which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory of the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing this distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry

into the United States. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

Code of Federal Regulations, Title 9, Section 317.2.

. . . . .  
(b) Any word, statement, or other information required by this part to appear on the label must be prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. In order to meet this requirement, such information must appear on the principal display panel except as otherwise permitted in this part.

(c) Labels of all products shall show the following information on the principal display panel (except as otherwise permitted in this part), in accordance with the requirements of this part or, if applicable, Part 319 of this subchapter:

(4) An accurate statement of the net quantity of contents, as prescribed in paragraph (h) of this section:

(h)(1) The statement of net quantity of contents shall appear on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the package and shall be declared in accordance with

the provisions of subparagraphs (2) through (10) of this paragraph.

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

California Business and Professions Code § 12211.

Each sealer shall, from time to time, weigh or measure packages, containers or amounts of commodities sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being sold in accordance with law.

The director is hereby authorized and directed to adopt and promulgate necessary rules and regulations governing the procedures to be followed by sealers in connection with the weighing or measuring of amounts of commodities in individual packages or containers or lots of such packages or containers, including the procedures for sampling any such lot, and in determining whether any package or container or a lot of such packages or containers complies with the provisions of this section. Any such rule or regulation, or amendment thereof, shall be adopted and promulgated by the director in conformity with the provisions of Chapter 4.5 (commencing with Section 11371), of

Part 1 of Division 3 of Title 2 of the Government Code; provided, that the average weight or measure of the packages or containers in a lot of any such commodity sampled shall not be less, at the time of sale or offer for sale, than the net weight or measure stated upon the package, and provided further, that said rules or regulations applicable to food, as defined in Section 26450 of the Health and Safety Code, insofar as possible, shall not require higher standards and shall not be more restrictive than regulations, if any, promulgated by the Department of Health, Education, and Welfare, Food and Drug Administration, under the provisions of the Federal Food, Drug and Cosmetic Act.

Any lot or package of any such commodity which conforms to the provisions of this section shall be deemed to be in conformity with the provisions of this division relating to stated net weights or measures.

Whenever a lot or package of any commodity is found to contain, through the procedures authorized herein, a less amount than that represented, the sealer shall in writing order same off sale and require that an accurate statement of quantity be placed on each such package or container before same may be released for sale by the sealer in writing. The sealer may seize as evidence any package or container which is found to contain a less amount than that represented.

California Business and Professions Code § 17500.

It is unlawful for any person, firm, corporation or association, or any employee thereof with



intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised.

California Civil Code §3369.

1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

61 Stat. 166, 7 U.S.C. section 135(a) provides:<sup>1</sup>

(a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

....

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

<sup>1</sup>This statute was amended to transfer responsibility for its enforcement to the Administrator, Environmental Protection Agency, by 84 Stat. 2086. No substantive change was made to 7 U.S.C. § 135(a)(2)(c).

(a) the name and address of the manufacturer, registrant, or person for who manufactured;

(b) the name, brand, or trade-mark under which said article is sold; and

(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations.

....

The United States Department of Agriculture issued an interpretation of this statute which has been adopted as a regulation by the Environmental Protection Agency, 40 C.F.R. §162.104.

40 C.F.R. §162.104 provides:

*Interpretation with respect to statement of net contents.*

(a) *Requirement of the act.* The act requires that the label of each economic poison bear a statement of the net weight or measure of the contents.

(b) *Terms of weight or measure.* (1) If there are terms of weight or measure in general use for a particular economic poison which will give accurate information to users as to the quantity of content, such terms shall be used on the label.

....

(d) *Permissible variations.* (1) If the contents are stated as a minimum quantity, the package must contain at least the quantity claimed. No variation below this quantity is permitted and any variation above the contents stated must not be unreasonably large.

(2) The net content is considered to be the average net content unless stated as a minimum quantity. Where average net content is used:

(i) The average content of the packages in any shipment must not fall below the quantity stated and variation above the quantity stated is permitted only to the extent that it represents deviations unavoidable in good packing practice.

(ii) There must be no unreasonable variation from the average in the content of any package.

(e) *Allowance for loss.* A statement of net content "when packed" does not comply with the requirements of the act. The statement must be such that it will be correct as long as the economic poison is subject to the law. Thus, if a product such as borax may lose weight by drying out when stored in paper bags, it must be packed and labeled in such a way that the statement of net content will be correct when the product is purchased.

....



**APPENDIX C.**

**Relevant Portions of the Record Below**

**Testimony of V. L. Hutchings, U.S.D.A. Regional Compliance  
Officer (Reporter's Transcript, pp. 371-394)**

**DIRECT EXAMINATION**

**BY MR. GOODMAN:**

**Q** Mr. Hutchings, would you state your present occupation?

**A** I am the officer in charge for the compliance staff for the United States Department of Agriculture meat and poultry inspection programs.

**Q** For any particular region?

**A** Western region.

**Q** How long have you held that position?

**A** Going on two years.

**Q** When did you become compliance supervisor for the western region?

**A** March '71.

**Q** Prior to assuming those duties did you also have employment with the United States Department of Agriculture?

**A** Yes, sir. I had two years as a compliance officer with the same staff prior to that. And I had 14 years as meat and poultry inspector inside the official establishment.

**Q** Mr. Hutchings, as a compliance and review officer what were your duties?

**A** You are asking me as compliance officer now?

**Q** Yes, as an officer prior to assuming your present position.

**A** Okay. My job was to monitor the interstate transportation of meat and poultry products both edible

and inedible to determine whether they were misbranded or adulterated and take appropriate action if found to be in violation of federal codes.

**Q** Can you tell us how you determined whether a product which had moved in interstate commerce was misbranded?

**MR. DUNLAVEY:** Objection; immaterial as to how he determined it, your Honor.

**THE COURT:** The objection is sustained.

**BY MR. GOODMAN:**

**Q** Can you tell us what the enforcement procedure was that you followed to determine whether a product was misbranded?

**MR. DUNLAVEY:** The same objection; irrelevant, your Honor.

**THE COURT:** The objection is sustained.

**MR. DUNLAVEY:** We are concerned with state test procedures here.

**THE COURT:** Sustained.

**BY MR. GOODMAN:**

**Q** What are your duties in your present position?

**A** I am supervisor of *seven compliance officers* in the western area that perform the same duty as I stated prior.

**Q** How many states are there in the western region?

**A** *Twelve states* including Alaska and Hawaii.

**Q** Have you given those inspectors any instructions to follow with respect to making determinations of whether meat and poultry products are misbranded at the retail level?

**MR. DUNLAVEY:** Objection; irrelevant.

**THE COURT:** The objection is sustained.

(Brief pause.)

BY MR. GOODMAN:

Q As head of the retail compliance, United States Department of Agriculture, have you ever caused meat to be ordered off sale because it was short weight at retail?

MR. DUNLAVEY: Objection, your Honor, irrelevant.

THE COURT: The objection is overruled.

THE WITNESS: Ordered—

BY MR. GOODMAN:

Q You may answer.

A Let me get this—would you restate the question.

THE COURT: Read the question.

(Record read.)

THE WITNESS: Yes.

BY MR. GOODMAN:

Q Would you describe the circumstances?

MR. DUNLAVEY: Same objection.

THE COURT: The objection is sustained.

BY MR. GOODMAN:

Q Does your unit have a procedure by which it inspects meat food products at the retail level which have been subjected to in-plant inspection under the federal Wholesome Meat Act?

MR. DUNLAVEY: Objection, your Honor; USDA procedures are apparently being regarded as irrelevant at this trial unless they stem from a statute or regulation so the question is irrelevant.

....

THE COURT: The objection is overruled.

MR. GOODMAN: Would the reporter read the question.

THE WITNESS: Right.

(Record read.)

MR. DUNLAVEY: I object to that question, your Honor, as irrelevant unless the witness first testifies that that procedure is found in the statutes or regulations.

THE COURT: That objection is overruled.

THE WITNESS: Yes, we do have a procedure. It is set up administratively—

MR. DUNLAVEY: Your Honor, I assume the next question is going to be, "What is the procedure," and the same objection would be made to it. So before the witness goes ahead may I request that we go question by question.

THE COURT: The objection is overruled. There is nothing pending.

BY MR. GOODMAN:

Q What is that procedure, Mr. Hutchings?

A Okay. The procedure is an administrative procedure based on the regulations promulgated under 9 CFR, Section 301 through and inclusive of 325.

MR. DUNLAVEY: May I take the witness on voir dire before this goes any further?

THE COURT: All right.

#### VOIR DIRE EXAMINATION

BY MR. DUNLAVEY:

Q Mr. Hutchings, you said the administrative procedure that you are about to describe is based on the regulations. Is that procedure stated in the regulations as such?

A Could you clarify for me the procedure now? Are you asking me if the exact procedure is set forth or if the regulations are there prescribing the handling of this product or the inspection of this product?



Q My question is whether the procedure that you are going to describe is set out in the regulations as distinguished from just being based on them.

A They are not set forth in the regulations.

MR. DUNLAVEY: I object to any further continuation of the answer as irrelevant.

THE COURT: The objection is overruled. It is admitted only for the limited purpose of explaining the question set forth in the regulations, that is, what are the tolerances for good manufacturing process and good distribution process, if it will shed any light upon that subject.

. . . .

A The procedure is set forth on the basis of the regulations as we explained with the understanding that there is on a complaint basis to go into retail stores, *we do not normally make a review in the retail stores*. In other words, we don't go in every day randomly selecting stores and review these, it is on a complaint basis. The review is based on—with the court's indulgence let me think a minute. (Brief pause.)

Okay. The review is based on the inspector's knowledge and the regulations that prescribe that all meat and poultry products are wholesome and not misbranded. This that would be based—would be based from a consumer or various other sources. The compliance officer would be charged with the responsibility of making inquiry, determining the facts of that complaint and producing that information.

If a violation, or it appears to be a violation, in an alleged situation that would be fully documented, all procedures would be fully documented and it would be documented for our legal counsel.

MR. DUNLAVEY: I move to strike the answer because from the limited purpose of what your Honor admitted it has no bearing.

THE COURT: Sustained.

BY MR. GOODMAN:

Q What procedures do you rely on in making your determinations, Mr. Hutchings?

Perhaps we can clear it up this way. What are the sources that you might rely on in making a determination of short weight at retail?

MR. DUNLAVEY: Objection, irrelevant.

THE COURT: The objection is overruled.

THE WITNESS: You specifically referred to short weight?

BY MR. GOODMAN:

Q Yes, that is what this case is about.

A *Short weights would be complaint by another government agency, would be by a consumer, would be by a retailer. They would specify that they have reason to believe is improperly weighed. On that basis we would ask somebody in authority, an agency in authority to check that product and produce that information to us, the findings of whether that product was in fact in violation or not.*

Q *What other governmental agencies would you rely on to receive this information?*

A We have many of them, Federal Food and Drug, State Food and Drug, Weights and Measures people.

Q *Would that be state's Weights and Measures?*

A *State's Weights and Measures are, yes.*

Q What kind of information do you receive from state Weights and Measures people to assist you in making your determination?

MR. DUNLAVEY: Objection as irrelevant, your Honor.

THE COURT: The objection is sustained.  
(Brief pause.)

BY MR. GOODMAN:

Q How do you make your determination of whether a product is misbranded at the retail level?

MR. DUNLAVEY: Objected to, your Honor, unless the question is limited to short weight.

THE COURT: The objection is sustained.  
Limit it to that.

.....

A The agency, whichever agency was doing the work for us, state or federal, would be asked to produce actual evidence of their findings that the product was actually—the net weight was improper or different than that stated on the package. And that procedure would be presented, a thorough procedure, as basis for the calculations or for picking up—holding the product.

Q What is it that you consider to be an improper net weight at retail?

MR. DUNLAVEY: Objection, your Honor; what he considers is irrelevant.

THE COURT: The objection is overruled limited to the consideration the court has indicated.

THE WITNESS: Would you state the question.

THE COURT: Read the question.  
(Record read.)

THE WITNESS: Are you asking specific weights or percentages or what more specific?

BY MR. GOODMAN:

Q Whatever is the procedure which you use as a compliance officer for the western region.

A If the information that was obtained from the agency that did the weighing indicated that the product was underweight, and *this would be a judgment call on my part* basically with this information, we'd be talking about more than one package being underweight within that one or two packages. If it got beyond five or six out of say ten or fifteen packages this is reason to believe that there is enough product underweight that we would take action against.

Q Would the determination of shortage from the stated label weight be made by the other governmental organization; Would they do the testing?

A The other government—

MR. DUNLAVEY: Objection as irrelevant and ambiguous.

THE COURT: The objection is overruled.

THE WITNESS: The Government agency which was doing the testing would advise us of that difference in weight.

BY MR. GOODMAN:

Q *County Departments of Weights and Measures would be such governmental organizations?*

A Yes, could be.

Q *Is it a correct statement that you would rely upon the determination as to short weight made by a California County Department of Weights and Measures in making your determination of short weight?*

A Yes, we would use that method and their information.

.....

Q *Have you instructed your compliance officers to visit retail markets when California County Weights*



*and Measures officials are making determinations of weight at retail?*

A No, sir.

. . . . .

CROSS-EXAMINATION

BY MR. DUNLAVEY:

Q You have testified about a procedure that is used in checking net weight at the retail store level. *Is that procedure reduced to writing anywhere?*

A No, sir.

Q Where did it come from?

A *First off we are not qualified as persons to check net weights, our compliance officers. But other agencies do have that qualification and we have to ask for those agencies to assist us in making these determinations or we have to rely on their information to remove or to have product removed from the market that may be misbranded.*

Q Who authorized that kind of procedure?  
(Brief pause.)

A Well, just to tell you the truth, I really don't know. It is in our administrative handling of our problems within compliance staff.

Q It does not exist anywhere in writing? It is just some practice that has been followed as a matter of habit, is that right?

A Habit—

. . . . .

THE WITNESS: Yes.

BY MR. DUNLAVEY:

Q Are you aware at least to some extent of the content of the Wholesome Meat Act of 1967?

A Yes, sir.

Q Are you aware of Section 601(n) which defines the term "misbranded"?

A Yes, sir.

Q And are you aware of that part of that section that says that there shall be an accurate statement of the quantity of contents on the label with respect to weight measure or numerical count?

. . . . .

Q Upon what statute or regulation do you base your procedure that the statement of net weight shall be accurate at the time you find the product in the retail store?

. . . . .

THE COURT: . . .

Where do you find that?

THE WITNESS: You have stated part of that 601 (n) which states that this must be properly labeled or contents must be stated. And also the meat inspection regulations which provide the same criteria only it is only—it is further explained.

BY MR. DUNLAVEY:

Q That really does not answer the question I had asked you. Upon what statute or regulation do you base your requirement that the statement about net weight shall be accurate at the time the product is in the retail store?

A I do not believe we have a statement on retail stores or regulation on the retail stores' net weight.

. . . . .

Q The Department of Agriculture regulations provide among many other things—

THE COURT: Do not read the provisions of the regulations, Mr. Dunlavey. I am going to have to read them to decide this case. And the fact that this man knows or does not know that they exist does not change that requirement by me.

MR. DUNLAVEY: Your Honor, if you can appreciate my position here as counsel. This man was allowed to testify because your Honor was interested whether he could shed any light upon what the department provides or recognizes as reasonable variation for manufacturing practices.

THE COURT: That is right. He has told me the practice.

MR. DUNLAVEY: Pardon?

THE COURT: He has told me the practice.

MR. DUNLAVEY: I would like to explore—

THE COURT: That is all I was interested in was the practice so I could find out whether or not it helped shed any light on this distribution practice.

MR. DUNLAVEY: I need to explore that, your Honor, for my client's protection to find out—

THE COURT: Then ask the question directly.

Is there anything in the regulations that explains what good distribution practice is. That is going to be a big problem in this case, I think.

BY MR. DUNLAVEY:

Q Let me repeat my question, Mr. Hutchings. Is there—

THE WITNESS: Would you kindly restate—

THE COURT: *Is there anything in the Code of Federal Regulations that explains what good distribution practice means?*

THE WITNESS: *No, sir, not to my knowledge.*

BY MR. DUNLAVEY:

Q Is there anything in the regulations that puts a quantitative limit on a reasonable variation?

A Not to my knowledge.

Q Is there anything in the regulation that puts a limit on the amount of reasonable variation that is to be recognized for loss of moisture that is caused by good distribution practice?

. . . . .

Q Is there anything in the statute or in the regulations that tells you how much weight a product may lose during the course of distribution practice because of the loss of moisture?

A Not to my knowledge, no.

Q Is there anything in the regulations that puts a quantitative measure on whether a variation from stated quantities of contents is unreasonably large?

A Not to my knowledge, no.

(Pause.)

Q You said that whether a given amount of deviation from stated net weight at the retail store amounts to an improper deviation is something that is within your "judgment call," what did you mean by that?

A Not having the specific facts I would have to say this: That if an agency produced information that the majority of the product we were talking about was not properly labeled, or in this case the net weights were less than what was stated on the package, it would be my judgment that that product should be removed from it or detained under our authority and the owner of that product notified and asked to correct the deviation.

Q Is there anything within the Department of Agriculture that authorizes you to accept a representa-



tion by a California Weights and Measures official as to whether a product is or is not short weight?

A There is nothing that authorizes this, that is right.

Q Then you do this as a matter of your personal determination and not as a matter of Department of Agriculture policy?

A No. I think this is department-wide, or at least our staff-wide. I don't do it personally, no, sir.

. . . . .

Q Is there anything that the department has told you or given to you which you regard as an instruction to use this state determination as your determination?

A There is no written material on those lines, that is right.

. . . . .

Q Have you ever exercised the judgment as to whether some meat product had lost moisture during distribution then was reasonable as a variation from stated net weight?

. . . . .

A Yes, we have.

Q Did you base that judgment on any federal statute or regulation?

A Would you ask the question that was asked before this that I answered yes to?

THE COURT: Read the question.

(Record read.)

(Brief pause.)

THE WITNESS: No, we did not.

BY MR. DUNLAVEY:

Q You are changing your answer?

A No. The second question you asked was if we use—if I recall the question right, we used a procedure

within USDA or regulations that stated this, is that right?

Q Your testimony is that you exercised such judgment but the judgment was not based on a federal statute or regulation?

A That is right.

Q Do you recall what that judgment was when you exercised it?

A Sir?

Q Do you recall what the judgment was when you exercised it? In short, what did your judgment designate as reasonable variation at the time you exercised it?

A The information was produced by—can we relate to specific states, sir?

THE COURT: Well—

THE WITNESS: The Government agency—another Government agency produced evidence to us that there was product in question due to moisture loss or other loss, not solely water, and that the net weight statement on the package was different from that that the product was weighed. We used the section that you quoted to start with, Section 601. That product was misbranded at that time with that information that that state agency produced for us.

BY MR. DUNLAVEY:

Q How short was it?

A Those records I would have to obtain. I cannot tell you exactly.

Q Do you recall approximately the percentage that the weight was short from what the label said?

. . . . .

THE WITNESS: Can I give you the approximation in ounces rather than percentages?

THE COURT: Certainly.

THE WITNESS: If I recall the figures correctly they were between a quarter of an ounce and a half an ounce less than the stated net weight.

BY MR. DUNLAVEY:

Q And the stated net weight was how much?

A One pound, sir.

Q Have you ever given advice to any meat packer as to how much variation you or your group would regard as reasonable as a variation from stated net weight?

A Absolutely not.

Q Why not?

A That is not in my realm. I have no authority to tell the packer or advise the packer or any producer what he is allowed to do. And especially in regard to net weights which are administered by another division of our agency and other agencies.

Q So if a packer were to ask you how much variations was reasonable variation you would decline to state?

A That is right. I am not qualified.

MR. DUNLAVEY: No other questions.

. . . . .

Testimony of Norman L. Mettert, Los Angeles County Department of Weights and Measures (Reporter's Transcript, pp. 335-339)

#### DIRECT EXAMINATION

BY MR. GRAHAM:

Q Do you have a deputy sealer's certificate?

A Yes.

Q Issued by the State of California?

A Yes.

Q Are you the supervisor in the Compliance Division under whom the bacon inspections were made between the period of time September 1971 to March '72?

A Yes.

Q Mr. Mettert, as a result of those inspections which resulted in off sale orders were package inspection reports made?

A Yes, they were.

MR. GRAHAM: At this time I would like to submit these documents for identification.

THE COURT: Defendants' A marked for identification.

(The exhibits referred to were marked Defendants' Exhibit A for identification.)

. . . . .

THE COURT: All right. A-1 through A-4.

(The exhibits referred to were marked Defendants' Exhibits A-1 to A-4 for identification.)

BY MR. GRAHAM:

Q Mr. Mettert, are those package inspection reports?

A Yes, they are.

Q What dates do those cover?

(Brief pause.)

A From October 15, 1971 through March 9, 1972.

. . . . .

Q Mr. Mettert, did you make a summary of the conclusions in those package inspection reports covering those dates before you?

A I did.

Q Did you prepare a summary sheet?

A I did.



MR. GRAHAM: I would like to have marked for identification summary sheets prepared by Mr. Mettert. This is designated on the pretrial order as our Exhibit E.

THE COURT: We will mark those as B.

MR. GRAHAM: Fine.

THE COURT: B for identification.

(The exhibit referred to was marked Defendants' Exhibit B for identification.)

(Brief pause.)

BY MR. GRAHAM:

Q Mr. Mettert can you tell us what your summary sheets mean with reference to these off sale orders or the package inspection reports?

A Each entry designates a lot that was inspected showing the average error either plus or minus of each lot and those lots in which they were ordered off sale.

Q How do you distinguish on your summary sheets the differences between the plus errors and the minus errors?

A The plus errors are recorded in black pen. The minus errors are recorded in red pen. Those lots in which they were ordered off sale were circled.

Q Mr. Mettert, covering the same period of time did your inspectors inspect the bacon products of Farmer John and Oscar Mayer?

A They did.

Q At any time during this period did you find that any of their lots were ordered off sale because they were short weight?

MR. DUNLAVEY: Objection, your Honor; irrelevant and it is not before the court.

THE COURT: The objection is sustained.

MR. GRAHAM: Your Honor, I would like to make an offer of proof that Mr. Mettert prepared summary sheets involving conclusions which his department found relating to Oscar Mayer and Farmer John. His conclusions being that at no time was any package ordered off sale for being short weight. Contrary to that these brands were substantially overpacked to take care of presumably any deviation which might occur.

THE COURT: What's that got to do with this lawsuit?

MR. GRAHAM: It has to do, your Honor, with conditions in the industry which you were referring to yesterday I believe.

THE COURT: Conditions in the industry? That has nothing to do with conditions in the industry. That has absolutely nothing to do with conditions in the industry.

MR. GRAHAM: It has to do with how other packers pack their bacon.

THE COURT: That does not show how other packers pack their bacon at all. It doesn't show it at all. It shows a result of something but it doesn't show how they do it.

MR. GRAHAM: I think it would appear that these statistics demonstrate that they do overpack. The package inspection reports would reflect they overpack.

THE COURT: We do not know that, Mr. Graham. They may have some secret that Rath does not have. We don't know that. This result doesn't show anything. It has no relevancy to this lawsuit.

....

Testimony of Chester A. Jaensen, Rath Packing Company  
(Reporter's Transcript, pp. 122-127)

BY MR. GOODMAN:

Q Is it a correct statement that Rath cures its bacon in part by injecting pork bellies with a curing solution?

A Yes, it is.

Q Can you tell us what is used in that curing solution?

A Yes.

Q Would you do so, please?

A The curing solution consists of water, salt, sodium nitrate, sodium marithorbate and tripolyphosphate.

Q And what is the purpose of the tripolyphosphate?

A It supposedly imbibes water.

Q Is that a technical way of saying that it causes moisture retention in the belly?

A Yes.

Q It does cause moisture retention?

A Yes.

Q Do you recall the amount of this curing solution that was injected into the bellies being produced in the Rath Vernon plan between—

MR. DUNLAVEY: May I object—excuse me.

BY MR. GOODMAN:

Q Between June of 1971 and June of 1972?

MR. DUNLAVEY: Your Honor, I object to the question as constituting an attempt to probe the way in which the USDA has conducted its in-plant inspection. As I think your Honor has intended to convey, the question is whether the preparation of bacon is carried out under USDA inspection. It is not a question of how the USDA conducts that inspection.

THE COURT: That is correct, Mr. Goodman. I do not think we are here concerned with whether the United States Department of Agriculture does a good or bad job and whether the law is a good or bad law. It is just a question of the limitation that law has placed on the state.

MR. GOODMAN: Your Honor, in an earlier ruling it was our position that the manual was admissible only to show that Rath was not complying with it. And this question and another series are directed to show that Rath exceeds the standards of that manual whether or not it is of any validity.

THE COURT: We are not concerned about whether or not they exceeded, that is the Department of Agriculture, the United States Department of Agriculture's problem. If they don't do their job I guess there are ways of getting about it but it is not this lawsuit. I am not concerned here, I am concerned as a citizen that they do their job but I am not concerned here as a judge in this lawsuit as to whether or not they are doing a job properly or not.

What I am limited to here I think is what limitation that the law Congress has enacted places upon states, what the limitation is. I don't think it goes beyond that.

MR. GOODMAN: If I understand the court's ruling then testimony as to the amount of water in bacon is not proper before the court.

THE COURT: No. Whether Rath puts more water in their bacon than somebody else or somebody else puts more water in their bacon than Rath does is immaterial. The question is what does the law preclude the State of California and its subdivisions from doing in terms



of meat inspection, inspection of meat products and their packages.

MR. GOODMAN: Your Honor—

THE COURT: That is the question here. There is no other question here.

Whether or not what the USDA is doing is good or bad is not in issue.

MR. GOODMAN: My questions go to what Rath is doing. What I am trying to establish—

THE COURT: Even what they do, whether it is good or bad, is not an issue here. What is in issue is what limitations the Congress has put upon the state.

MR. GRAHAM: Your Honor, could I address myself to that issue?

THE COURT: Yes.

MR. GRAHAM: It seems to me that it is at issue because you can take the percentage of pumped amount of moisture in a belly and in a piece of bacon, and if it relates to the amount of shrink that bacon is going to have at the time of packaging, before packaging or after packaging, it seems to me that it is relevant to this case.

THE COURT: No, it isn't because that has to do with what job the United States Department of Agriculture is doing. On the state of the evidence thus far they ain't doing a very good job.

MR. GOODMAN: Your Honor, I would like to direct the court's attention to 9 CFR, Section 317.2(h) (2). Mr. Dunlavey cited that in his opening argument.

THE COURT: His opening statement is not evidence. I am not so sure that it even eliminates the issues.

. . . .

MR. GOODMAN: Your Honor, my reason for referencing that regulation is that it provides in part for reasonable variations caused by unavoidable deviations of good manufacturing practices. And the question—

THE COURT: The question then or the issue is what is good manufacturing practice and what is good distribution practice, and what variances are to be expected as a result of that.

After you gentlemen all got through I was going to ask Mr. Jaensen as to what manufacturing process was placed to the bacon after it was sliced. Whether he knew anything about distribution practices and whether there were any criteria in the industry as to how much weight you are going to lose as a result of your distribution practice, that is what is relevant.

(Brief pause.)

THE COURT: Maybe there are procedures of the state to determine that. I don't know. I haven't heard them yet.

MR. GOODMAN: Your Honor, in any case I would like to make the following offer of proof.

That offer is as follows:

Between August 1971 and June 30, 1972, the Rath Packing Company injected 16 percent moisture into the bacon prior to its being pumped. That the bacon weighed between 12 and 13 percent drain weight for a 9 to 14½ pound belly range.

That the Rath records show that the smokehouse shrink was between 7 and 9 percent. That the cooler shrink was between 1½ and 2½ percent. And that the anticipated weight of the bellies after completion of all processes prior to slicing shows that the bacon

would contain at least 3½ percent added moisture. This is under the process for the 9 to 14½ pound bellies.

THE COURT: All right.

MR. GOODMAN: In addition, your Honor, that for the week ending 9/18/71 for bellies in cure Rath used 18,644 pounds of bellies. But that record of the Rath Packing Company labeled "Material Yield Profit or Loss" for that week end showing actual pounds produced from those same amount of raw product to be 22,548 pounds or an additional 3,904 pounds of bacon.

That for the week ending 12/4/1971 the actual pounds used were 116,299 pounds but after smoke and immediately prior to slice the product showed 119,615 pounds or a net gain of 3,300 pounds.

That for the week ending 1/29/72 that the number of pounds of raw product actually used in the bacon product for the Rath Vernon plant, to which all of these records relate, were 190,361 pounds. That the actual amount of bacon produced was 195,816 pounds for a net gain of 12,898 pounds of bacon containing water.

. . . .

#### **APPENDIX D.**

**Title 4, California Administrative Code, ch. 8, subch. 2,**

**Art. 5, Provides:**



#### DEFINITIONS

2930. The definitions in this Article apply to this Article only and do not affect the provisions of any other Article, Chapter or Sub-Chapter.

2931. "Container" means any receptacle or carton, whether lidded or unlidded, into which a commodity is packed or placed, or any wrappings with or into which any commodity is wrapped or put for sale.

2931.1. "Package" means any consumer size "container" and its contents.

2931.2. "Tare Material" shall be synonymous with "Container," and "Tare" and shall be construed to be the weight of such tare material.

2931.3. "Lot" means the total number of packages of a single item of merchandise in a single size at one location and may contain two or more "sub-lots."

"One location" shall be construed to mean "one display" or "one grouping," and does not, for example, mean all items of the same brand and size stored or kept for sale in one establishment.

(a) "Sub-lot" refers to those packages of merchandise within either a "Standard-Pack" lot or "Random-Pack" lot which can be readily identified by a similar or uniform "Lot-Symbol" or grouping.

2931.4. "Lot-Symbol" means the word, letter or numeral (or combination of these), used by the packer or manufacturer to identify packages which were packed or shipped at a given time.

2931.5. CLASSES OF PREPACKAGED COMMODITIES. (a) "Standard-Pack" means consumer size packages of a uniform weight, measure or count, of the same brand or identification.

(b) "Random-Pack" means consumer size packages of the same brand or identification but of varying weight, volume, or count.

2931.6. "Sample" designates the group of packages or containers used for testing purposes. (a) "Package Sample Size" shall be as noted in "Procedure," 2933.3, Table I, Column "B" and shall be based on Column "A" "Lot Size."

(b) "Sub-groups" shall be formed by recording the individual observations in the order in which they are weighed, measured, or counted.

(c) "Tare Sample Size" shall be as noted in "Procedure," 2933.3, Table I, Column "D" and shall be based on Column "B" "Package Sample Size."

(Note: When selecting a sample representing a "lot" or "sub-lot", the packages shall be selected at random if practicable. Packages shall be selected without regard to appearance. If practicable all samples shall be selected before any weighing, measuring or testing is done. This provides for testing the "lot" or "sub-lot" in an "as found" condition.)

2931.7. "Retail Level" shall be construed to designate any place of business, or manner of selling any product, in which said product is, or may be, sold, offered or exposed for sale directly to the consumer or user.

(Note: When selecting a "sample" to be tested at the "retail level" said sample shall include only those packages selected from a "lot" or "sub-lot" at a single point-of-sale location. This shall not preclude the taking of other "samples" from storage facilities, or other locations, within the retail outlet. However, any action to be taken by the inspector with respect to any "lot" or "sub-lot" shall be based on the "sample" of the specific "lot" or "sub-lot.")

2931.8. "Wholesale Level" shall be construed to include the packing, manufacturing, warehouse, storage, jobber and distribution levels.

(Note: In most cases at the above named levels, products will be found in case lots. The "sample" shall be based on the number of "packages" within the cases of the "lot" or "sub-lot.")

2931.9. "Unsuitable-for-sale" packages are packages that have been opened for testing purposes and cannot, in their opened state, be classed as saleable merchandise.

However, packages opened in the place of business where originally packaged are not to be construed as "unsuitable-for-sale" if, by following good sanitary procedures and adequately protecting the public health, the commodity within these packages may be reprocessed or repackaged. This shall be done at the expense of said packer.

2931.10. "Error" means the amount the observed net contents of a package varies from the declared labeled contents.

#### EQUIPMENT AND USE

2932. The testing equipment used by weights and measures officials shall be of such design, sensitivity, and construction so as to render accurate weight indications throughout its designated capacity. Said testing equipment should be fitted with locking devices to minimize wear to the working component while in transit, and should also be fitted with a handle for carrying and a protective cover or box.

All testing equipment owned by a weights and measures jurisdiction shall be restricted to official use and completely controlled by said weights and measures jurisdiction.

Scales used by State or local officials for the package-checking procedure should be of such design and construction as to afford weight graduations appropriate to the quantity declarations on the packages to be checked.

2932.1. After the announcement of his presence, the official is to select a suitable position for his package-checking operations. The principal requirement of the site is its convenience - both to the inspector and to the place of business.

2932.2. The inspector shall see that the testing equipment used is placed upon a firm support immediately prior to its official use, is suitably leveled, and is tested for sensitiveness and accuracy at least through the weight range of the package to be tested.

2932.2.1. If a store scale is selected for use in the tests it shall be accurate and capable of being properly utilized for such tests. Once the scale has been selected by the inspector, it shall not be released, except at his discretion, until the inspector's use of it has been completed. (Amended 9-23-71)

2932.3. Package "errors" (the amount of deviation from the stated net contents) shall be recorded only within the sensitivity of the scale at the applied load.

(Example: A scale graduated in 1/8 oz. graduations is found to be accurate and sensitive to 1/16 oz. Errors may be recorded to 1/16 oz. or any amount greater than 1/16 oz. A scale graduated in 1/8 oz. graduations is found to be accurate and sensitive to 1/8 oz. In no case shall errors be recorded to less than 1/8 oz. for that scale, but may be recorded in amounts greater than 1/8 oz.)

#### PROCEDURE: COMMODITIES SOLD BY WEIGHT OR COUNT IN "STANDARD-PACK" OR "RANDOM-PACK" PACKAGES:

2933. It is the intent of the following step-by-step procedures to outline a uniform, feasible, and equitable method for determining acceptable or "off-sale" lots of packaged commodities based upon the average concept, and for determining which packages have unreasonable errors.

2933.1. LOTS. The procedures for package testing as set forth herein shall be used only for single "lots," or "sub-lots." The results obtained from full samples of different "lots" or "sub-lots" shall not be numerically averaged together or acted upon jointly. For purposes of passing or marking "off-sale," each lot or sub-lot tested shall be acted upon individually.

2933.2. OFF-SALE ORDER. Pursuant to Division 5, Chapter 1, Section 12025.5 of the Business and Professions Code of the State of California, packages marked "off-sale" shall be suitably marked or identified with a tag or device. Said device or tag to be designed and furnished by the Bureau. Such packages shall be subject to the provisions of Section 12025.5.

2933.3. PAYMENT FOR PACKAGES. Immediately after completion of tests upon a "lot" to be passed as correct the weights and measures official in charge of the test shall offer to pay for packages which he has, or caused to be, rendered "unsuitable for sale." Any such packages paid for with county funds shall be subject to such disposal as ordered by the governing Board of Supervisors. If, however, the "unsuitable for sale" packages are part of a lot marked off-sale then these packages are to be considered as part of the lot and the weights and measures officials need



(2933.3.

not pay for said packages. Packages opened in the place of business where originally packaged are not to be construed as "unsuitable-for-sale" if, by following good sanitary procedures and adequately protecting the public health, the commodity within these packages may be reprocessed or repackaged. This shall be done at the expense of the said packer. Pursuant to Division 5, Chapter 2, Article 2, Section 12211 of the Business and Professions Code, "the sealer may seize as evidence any package or container which is found to contain a lesser amount than represented."

Table I shall be used for Step 1 through Step 5 following:

TABLE I			
"A" LOT SIZE	"B" PACKAGE SAMPLE SIZE	"C" SUB-GROUP SIZE	"D" TARE SAMPLE SIZE
2	2	ALL	2
3	3	ALL	2
4	4	ALL	2
5	5	ALL	2
6	6	ALL	2
7	7	ALL	2
8	8	ALL	2
9	9	ALL	2
10	10	ALL	2
11-150	10	5	2
151-300	15	5	2
301-500	25	5	3
501-800	30	5	4
801-1300	40	5	5
1301-3200	50	5	6
3201-8000	60	5	7
8001-22,000	120	5	12
Over 22,000	240	5	23

2933.3.1. (Step 1.) Determine the number of consumer size packages in the "lot" to be tested.

2933.3.2. (Step 2.) Determine the "PACKAGE SAMPLE SIZE" from Table I, Section 2933.3, Column "B" "PACKAGE SAMPLE SIZE" corresponding to Column "A" "LOT SIZE."

2933.3.3. (Step 3.) Determine the "TARE SAMPLE SIZE" from Table I, Section 2933.3, Column "D" "TARE SAMPLE SIZE" corresponding to Column "B" "PACKAGE SAMPLE SIZE."

(Example: The "lot" being sampled consists of 32 cases of 24 consumer size packages in each case. "LOT SIZE" (Column "A") = 768 consumer size packages (32 x 24 = 768). A lot size of 768 packages falls in the range of 501-800 in Column "A", and by reading to the right in Column "B" a "PACKAGE SAMPLE SIZE" of 30 is determined. By reading to the right of 30 in Column "B", a "TARE SAMPLE SIZE" of 4 is determined from Column "D". These 120 packages are to be selected at random from the packages selected to represent the "PACKAGE SAMPLE SIZE.")

2933.3.4. (Step 4.) RECORDING OF TARE SAMPLE. Carefully weigh and record the gross weight of each package of the "Tare Sample" and identify each with a letter or numeral to be written on the package. (These containers should then be retained for use in Step 5). Exercising care that none of the contents is spilled or lost, determine and record the net weight of the contents of each package. The net weight of the contents shall not include any free water or ice or ice glaze. When products are packed in non-edible brine or other non-edible preserving fluids, the weight or measure of the non-edible brine or other non-edible fluid shall not be included in the weight or measure of the edible or other commodity indicated on the container.

2933.3.5. (Step 5.) TARE WEIGHT DETERMINATION. Determine the average tare weight of the containers in the "Tare Sample" by dividing the total weight of the tare material by the number of containers. Individual container tare weights are classified as "Wet Tare" and "Dry Tare." When a single lot has some containers classed as "Wet Tares" and others as "Dry Tares", the weights of a representative number of "Wet Tares" and "Dry Tares" may be combined and averaged together.

(a) "Wet Tare" shall be determined by weighing the used, empty container from which all the usable net contents have been removed.

(b) "Dry Tare" shall be determined by weighing the empty and dry containers or by weighing unused containers of the same make, design, and type used at the time of packing. A "Dry Tare" is to be used only when none of the containers in the lot being sampled has retained a substance foreign to the container. (Amended 9-23-71)

2933.3.6. (Step 6.) RECORDING OF ERRORS. Using the average tare weight determined in Step 5, each package in the PACKAGE SAMPLE shall be weighed and the errors recorded and, except for one hundred per cent sampling, shall be recorded in sub-groups of five (5). Regardless of the units in which the errors are recorded, (Tenths, sixteenths, eighths, quarters, or the like), these recordings are shown as whole numbers. The recording of results, either by one hundred per cent sampling or sub-groups, shall be as follows:

(a) The "zero errors" (recorded as 0) and the "plus errors" (recorded as whole numbers) are to be recorded in one column.

(b) The "minus errors" (recorded as whole numbers) are to be recorded in a second column.

2933.3.7. (Step 7.) ESTABLISHED TOLERANCE. If a tolerance has been established by the Director for the commodity being tested, then any package the error of which exceeds, either plus or minus, the established tolerance shall be subject to appropriate action.

2933.3.8. (Step 8.) PRELIMINARY TOTAL ERROR. Determine the preliminary total error of the PACKAGE SAMPLE. The preliminary total error, for those lots on which conclusions have not been reached under the foregoing procedure, shall be determined as illustrated by the following example:

(Note: In Example I below, the lot consisted of 200 packages, giving "PACKAGE SAMPLE SIZE" of 15 and a "SUB-GROUP SIZE", from Table I, of 5, therefore three SUB-GROUPS shall be used in the computation.)

(2933.3.8.

(a) As in the Example I below, add the plus (+) errors, on the one hand, and the minus (-) errors, on the other hand.

EXAMPLE I

	ERRORS		RANGE
	-	+ & 0	
SUB-GROUP #1	1		
	3		
	1		
	1		
	3		2
SUB-GROUP #2	2	1	
	8	2	
		1	10
SUB-GROUP #3	2	0	
		0	
		0	
		0	2
Totals -	-21	+4	14

Preliminary Total Error ( -21 ) + ( 4 ) = -17

Preliminary Average Error ( -17 ÷ 15 ) = -1.13

Preliminary Average Range ( 14 ÷ 3 ) = 4.66

(b) Calculate the preliminary total error by algebraically adding the plus and minus errors. This is accomplished by arithmetically subtracting the smaller from the larger value and giving the remainder the sign of the larger value. (For example a plus four, (+4) added to a minus two, (-2), equals a plus two, (+2); or a plus four, (+4), added to a minus nine, (-9), equals a minus five, (-5.)

2933.3.9. (Step 9.) RANGE. Calculate the range of each sub-group. The range is the total difference between the largest and smallest observation. (For example, the range between a minus 8 (-8) and a plus 2 (+2) is 10, or the range between a plus 2 (+2) and a plus 10 (+10) is 8.) Total the ranges of all the sub-groups in the sample. Divide this sum by the number of sub-groups in the sample. Record this result as the preliminary average range. (In Example 1, Section 2933.3.8, we have  $14 \div 3 = 4.66$ .)

2933.3.10. (Step 10.) UNREASONABLE ERRORS. Determine the unreasonable error of individual packages by one of the following:

(a) If the preliminary average error is plus or zero, an individual unreasonable plus error is that package error which exceeds the sum of the preliminary average error and the numerical value shown in Table II; and an individual unreasonable minus error is one which exceeds the numerical value shown in Table II.

(2933.3.10.

(b) If the preliminary average error is minus, an individual unreasonable minus error is that package error which exceeds the numerical value shown in Table II; and an individual unreasonable plus error is that package error which exceeds the value of the remainder of the preliminary average error subtracted from the numerical value shown in Table II.

(Note: In Example, using the range of 4.66 and the sub-group size of 5, the individual unreasonable minus error from Table II is any minus package error greater than 3.90; and the individual unreasonable plus error is any plus package error greater than 1.13 subtracted from 3.90 or 2.77.)

(c) Circle and exclude all individual unreasonable errors from further computations. Additional replacement packages shall be selected until those discarded as individual unreasonable errors have been replaced by ones suitable for final computation. Only packages having errors equal to or less than the unreasonable individual errors as originally determined in (a) and (b) of this section shall be suitable for final computations.

(d) If at any time during this part of the procedure the total number of packages having unreasonable minus errors, which are also unreasonable under the provisions of Division 5, Chapter 6, Section 12613 and 12614 of the Business and Professions Code, and this number exceeds the number shown in Table I, Column D, for the corresponding sample size, then appropriate action shall be taken according to the provisions of Division 5, Chapter 2, Article 2, Section 12211 of the Business and Professions Code without further sampling.

If at any time during this part of the procedure the total number of packages having unreasonable plus errors exceeds the number shown in Table I, Column D, for the corresponding sample size then appropriate action shall be taken by calling this condition to the attention of the store operator or packer, or distributor.

SUMMARY OF RECORDING PROCEDURE

1. Record individual errors in columns of five.
2. Determine individual ranges.
3. Calculate average range.
4. Table II.
5. Circle minus errors greater than Table II.
6. Reject lot if number of unreasonable minus errors exceed tare sample size.
7. Determine total error (TE).
8. Determine average error.
9. Add or subtract average error to Table II.
10. Circle plus values greater than Table II plus or minus average error.
11. Replace unreasonable plus and minus values.
12. Calculate new ranges, average range and total error.
13. Consult Tables III and V
14. Accept, reject or take second sample after applying correction factors as may be required.



TABLE II  
MAXIMUM PERMISSIBLE INDIVIDUAL ERROR

Range*	SUB-GROUP SIZE								
	2	3	4	5	6	7	8	9	10
0.01-0.19	.17	.12	.10	.08	.08	.07	.07	.07	.06
0.20-0.39	.52	.35	.29	.25	.23	.22	.21	.20	.19
0.40-0.59	.87	.53	.48	.42	.39	.36	.34	.33	.32
0.60-0.79	1.22	.81	.67	.59	.54	.51	.48	.46	.45
0.80-0.99	1.56	1.04	.86	.76	.70	.65	.62	.59	.57
1.00-1.24	1.95	1.30	1.07	.95	.87	.82	.77	.74	.72
1.25-1.49	2.39	1.59	1.31	1.16	1.06	1.00	.95	.91	.88
1.50-1.74	2.82	1.88	1.55	1.37	1.26	1.18	1.12	1.07	1.03
1.75-1.99	3.26	2.17	1.78	1.58	1.45	1.36	1.29	1.24	1.19
2.00-2.24	3.69	2.46	2.02	1.79	1.64	1.54	1.46	1.40	1.35
2.25-2.49	4.13	2.75	2.26	2.00	1.84	1.72	1.63	1.57	1.51
2.50-2.74	4.56	3.04	2.50	2.21	2.03	1.90	1.81	1.73	1.67
2.75-2.99	4.99	3.33	2.74	2.42	2.22	2.08	1.98	1.90	1.83
3.00-3.24	5.43	3.62	2.97	2.63	2.42	2.27	2.15	2.06	1.99
3.25-3.49	5.86	3.91	3.21	2.84	2.61	2.45	2.32	2.23	2.15
3.50-3.74	6.30	4.20	3.45	3.05	2.80	2.63	2.50	2.39	2.31
3.75-3.99	6.73	4.49	3.69	3.27	3.00	2.81	2.67	2.56	2.47
4.00-4.24	7.16	4.78	3.93	3.48	3.19	2.99	2.84	2.72	2.63
4.25-4.49	7.60	5.07	4.16	3.69	3.38	3.17	3.01	2.89	2.79
4.50-4.74	8.03	5.36	4.40	3.90	3.58	3.35	3.18	3.05	2.95
4.75-4.99	8.47	5.65	4.64	4.11	3.77	3.53	3.36	3.22	3.10
5.00-5.24	8.90	5.93	4.88	4.32	3.96	3.71	3.53	3.38	3.26
5.25-5.49	9.34	6.22	5.12	4.53	4.16	3.90	3.70	3.55	3.42
5.50-5.74	9.77	6.51	5.35	4.74	4.35	4.08	3.87	3.71	3.58
5.75-5.99	10.20	6.80	5.59	4.95	4.54	4.26	4.04	3.87	3.74
6.00-6.49	10.86	7.24	5.95	5.27	4.83	4.53	4.30	4.13	3.98
6.50-6.99	11.72	7.82	6.43	5.69	5.22	4.89	4.65	4.45	4.30
7.00-7.49	12.59	8.40	6.90	6.11	5.61	5.25	4.99	4.78	4.62
7.50-7.99	13.46	8.97	7.38	6.53	5.99	5.62	5.33	5.11	4.94
8.00-8.49	14.33	9.55	7.85	6.95	6.38	5.98	5.68	5.44	5.25
8.50-8.99	15.20	10.13	8.33	7.37	6.77	6.34	6.02	5.77	5.57
9.00-9.49	16.07	10.71	8.81	7.79	7.15	6.70	6.37	6.10	5.89
9.50-10.49	17.37	11.58	9.52	8.43	7.73	7.25	6.88	6.60	6.37
10.50-11.49	19.11	12.74	10.47	9.27	8.51	7.97	7.57	7.26	7.00
11.50-12.49	20.84	13.90	11.42	10.11	9.28	8.70	8.26	7.92	7.64
13	22.58	15.05	12.38	10.95	10.05	9.42	8.95	8.58	8.28
14	24.32	16.21	13.33	11.80	10.83	10.15	9.64	9.24	8.92
15	26.05	17.37	14.28	12.64	11.60	10.87	10.33	9.90	9.55
16	27.79	18.53	15.23	13.48	12.37	11.60	11.01	10.56	10.19
17	29.53	19.69	16.18	14.32	13.15	12.32	11.70	11.22	10.83
18	31.27	20.84	17.14	15.17	13.92	13.05	12.39	11.88	11.46
19	33.00	22.00	18.09	16.01	14.69	13.77	13.08	12.54	12.10
20	34.74	23.16	19.04	16.85	15.47	14.50	13.77	13.20	12.74
21	36.48	24.32	19.99	17.69	16.24	15.22	14.46	13.86	13.37
22	38.21	25.48	20.94	18.54	17.02	15.95	15.14	14.52	14.01
23	39.95	26.63	21.90	19.38	17.79	16.67	15.83	15.18	14.65
24	41.69	27.79	22.85	20.22	18.56	17.40	16.52	15.84	15.28
25	43.42	28.95	23.80	21.06	19.34	18.12	17.21	16.50	15.92
26	45.16	30.11	24.75	21.91	20.11	18.85	17.90	17.16	16.56
27	46.90	31.27	25.70	22.75	20.88	19.57	18.59	17.82	17.19
28	48.63	32.42	26.66	23.59	21.66	20.29	19.27	18.48	17.83

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TABLE 1

"A"	"B"	"C"	"D"
LOT SIZE	PACKAGE SAMPLE SIZE	SUB-GROUP SIZE	TARE SAMPLE SIZE
2	2	All	2
3	3	All	2
4	4	All	2
5	5	All	2
6	6	All	2
7	7	All	2
8	8	All	2
9	9	All	2
10	10	All	2
11-150	10	5	2
151-300	15	5	2
301-500	25	5	3
501-800	30	5	4
801-1300	40	5	5
1301-3200	50	5	6
3201-8000	60	5	7
8001-22,000	120	5	12
Over 22,000	240	5	23

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TABLE II

\* Range for coded values in tenth, one-sixteenth ounce, one-eighth ounce, or other values.

2933.3.11. (Step 11.) TOTAL ERROR. Recalculate a new total error and a new

(Note: In Example II, the minus 8 error is circled and discarded. The replacement package has a minus 3 error).

		ERRORS	EXAMPLE II	RANGE
		-	+ & 0	
Sub-Group #1		1 3 1 1 3		2
Sub-Group #2	3	2 (8)	1 2 1	10 5
Sub-Group #3		2	0 0 0 0	2
Totals		21	+4	14
Corrected Totals		-16	+4	9

Corrected  
Total Error =  $(-16) + (4) = -12$

Corrected  
Average Range  $(9 + 3) = 3.00$

The individual unreasonable errors, both plus and minus, are excluded from the average, because they are acted upon individually and because their inclusion could destroy or alter the packaging pattern. For instance: A sample of ten (10) packages could show nine (9) packages each with a minus error of 1, and one package with a plus error 9. If the large plus error is included, the total error is 0. Obviously, the pattern of the sample is a minus 1 per package.

2933.3.12. (Step 12.) PRELIMINARY DETERMINATION. (a) If the total error as obtained from the sample is plus and is less than the value shown in Table III for the corresponding range and sample size, then a shortage may or may not exist, and additional samples may or may not be taken, depending upon the discretion of the Weights and Measures Official. If no additional samples are taken the lot shall be passed. If additional samples are taken then the procedures as set forth in the following sections shall govern the disposition of the lot.

(b) If the total error obtained from the sample is less than the above-determined value, and the error is minus, then a shortage may or may not exist, and additional samples may or may not be taken, depending upon the discretion of the Weights and Measures Official. If no additional samples are taken the lot shall be passed. If additional samples are taken then the procedures as set forth in the following sections shall govern the disposition of the lot.



TABLE III  
Value to be used to indicate a possible shortage

Range *	SAMPLE SIZE								
	10	15	25	30	40	50	60	120	240
0.01-0.19	.22	.27	.35	.39	.45	.50	.55	.77	1.10
0.20-0.39	.67	.82	1.06	1.16	1.34	1.50	1.64	2.32	3.29
0.40-0.59	1.12	1.37	1.77	1.94	2.24	2.50	2.74	3.87	5.48
0.60-0.79	1.57	1.92	2.48	2.71	3.13	3.50	3.83	5.42	7.67
0.80-0.99	2.01	2.47	3.18	3.49	4.03	4.50	4.93	6.97	9.86
1.00-1.24	2.52	3.08	3.98	4.36	5.03	5.63	6.16	8.72	12.33
1.25-1.49	3.07	3.77	4.86	5.33	6.15	6.88	7.53	10.65	15.06
1.50-1.74	3.63	4.45	5.75	6.29	7.27	8.13	8.90	12.59	17.80
1.75-1.99	4.19	5.14	6.63	7.26	8.39	9.38	10.27	14.53	20.54
2.00-2.24	4.75	5.82	7.51	8.23	9.50	10.63	11.64	16.46	23.28
2.25-2.49	5.31	6.50	8.40	9.20	10.62	11.88	13.01	18.40	26.02
2.50-2.74	5.87	7.19	9.28	10.17	11.74	13.13	14.38	20.34	28.76
2.75-2.99	6.43	7.87	10.17	11.14	12.86	14.38	15.75	22.27	31.50
3.00-3.24	6.99	8.56	11.05	12.10	13.98	15.63	17.12	24.21	34.24
3.25-3.49	7.55	9.24	11.93	13.07	15.10	16.88	18.49	26.15	36.98
3.50-3.74	8.11	9.93	12.82	14.04	16.21	18.13	19.86	28.08	39.71
3.75-3.99	8.67	10.61	13.70	15.01	17.33	19.38	21.23	30.02	42.45
4.00-4.24	9.22	11.30	14.59	15.98	18.45	20.63	22.60	31.96	45.19
4.25-4.49	9.78	11.98	15.47	16.95	19.57	21.88	23.97	33.89	47.93
4.50-4.74	10.34	12.67	16.35	17.91	20.69	23.13	25.33	35.83	50.67
4.75-4.99	10.90	13.35	17.24	18.88	21.80	24.38	26.70	37.77	53.41
5.00-5.24	11.46	14.04	18.12	19.85	22.92	25.63	28.07	39.70	56.15
5.25-5.49	12.02	14.72	19.01	20.82	24.04	26.88	29.44	41.64	58.89
5.50-5.74	12.58	15.41	19.89	21.79	25.16	28.13	30.81	43.58	61.63
5.75-5.99	13.14	16.09	20.77	22.76	26.20	29.38	32.18	45.51	64.36
6.00-6.49	13.98	17.12	22.10	24.21	27.95	31.25	34.24	48.42	68.77
6.50-6.99	15.10	18.49	23.87	26.15	30.19	33.75	36.98	52.29	73.95
7.00-7.49	16.21	19.86	25.64	28.08	32.43	36.25	39.71	56.16	79.43
7.50-7.99	17.33	21.23	27.40	30.02	34.66	38.75	42.45	60.04	84.91
8.00-8.49	18.45	22.60	29.17	31.96	36.90	41.25	45.19	63.91	90.38
8.50-8.99	19.57	23.97	30.94	33.89	39.14	43.75	47.93	67.78	95.86
9.00-9.49	20.69	25.33	32.71	35.83	41.37	46.26	50.67	71.66	101.34
9.50-10.49	22.36	27.39	35.36	38.73	44.73	50.01	54.78	77.47	109.56
10.50-11.49	24.60	30.13	38.90	42.61	49.20	55.01	60.26	85.22	120.51
11.50-12.49	26.84	32.87	42.43	46.48	53.67	60.01	65.73	92.96	131.47
13	29.07	35.61	45.97	50.35	58.14	65.01	71.21	100.71	142.42
14	31.31	38.34	49.50	54.23	62.62	70.01	76.69	108.46	153.38
15	33.54	41.08	53.04	58.10	67.09	75.01	82.17	116.20	164.34
16	35.78	43.82	56.57	61.97	71.56	80.01	87.65	123.95	175.29
17	38.02	46.56	60.11	65.85	76.03	85.01	93.12	131.70	186.25
18	40.25	49.30	63.65	69.72	80.51	90.01	98.60	139.44	197.20
19	42.49	52.04	67.18	73.59	84.98	95.01	104.08	147.19	208.16
20	44.73	54.78	70.72	77.47	89.45	100.01	109.56	154.94	219.11
21	46.96	57.52	74.25	81.34	93.93	105.01	115.03	162.68	230.07
22	49.20	60.26	77.79	85.22	98.40	110.01	120.51	170.43	241.02
23	51.44	63.00	81.33	89.09	102.87	115.01	125.99	178.18	251.98
24	53.67	65.73	84.86	92.96	107.34	120.01	131.47	185.92	262.94
25	55.91	68.47	88.40	96.84	111.82	125.01	136.95	193.67	273.89
26	58.14	71.21	91.93	100.71	116.29	130.01	142.42	201.42	284.85
27	60.38	73.95	95.47	104.58	120.76	135.02	147.90	209.16	295.80
28	62.62	76.69	99.01	108.46	125.23	140.02	153.38	216.91	306.76
29	64.85	79.43	102.54	112.33	129.71	145.02	158.86	224.66	317.71

TABLE III  
Value to be used to indicate a possible shortage\*\*

Range *	SAMPLE SIZE								
	10	15	25	30	40	50	60	120	240
30	67.09	82.17	106.08	116.20	134.18	150.02	164.34	232.40	328.67
31	69.33	84.91	109.61	120.08	138.65	155.02	169.81	240.15	339.63
32	71.56	87.65	113.15	123.95	143.12	160.02	175.29	247.90	350.58
33	73.80	90.38	116.69	127.82	147.60	165.02	180.77	255.65	361.54
34	76.03	93.12	120.22	131.70	152.07	170.02	186.25	263.39	372.49
35	78.27	95.86	123.76	135.57	156.54	175.02	191.72	271.14	383.45
36	80.51	98.60	127.29	139.44	161.01	180.02	197.20	278.89	394.40
37	82.74	101.34	130.83	143.32	165.49	185.02	202.68	286.63	405.36
38	84.98	104.08	134.37	147.19	169.96	190.02	208.16	294.38	416.32
39	87.22	106.82	137.90	151.06	174.43	195.02	213.64	302.13	427.27
40	89.45	109.56	141.44	154.94	178.91	200.02	219.11	309.87	438.23
41	91.69	112.30	144.97	158.81	183.38	205.02	224.59	317.62	449.18
42	93.93	115.03	148.51	162.68	187.85	210.02	230.07	325.37	460.14
43	96.16	117.77	152.04	166.56	192.32	215.02	235.55	333.11	471.09
44	98.40	120.51	155.58	170.43	196.80	220.02	241.02	340.86	482.05
45	100.63	123.25	159.12	174.30	201.27	225.03	246.50	348.61	493.01
46	102.87	125.99	162.65	178.18	205.74	230.03	251.98	356.35	503.96
47	105.11	128.73	166.19	182.05	210.21	235.03	257.46	364.10	514.92
48	107.34	131.47	169.72	185.92	214.69	240.03	262.94	371.85	525.87
49	109.58	134.21	173.26	189.80	219.16	245.03	268.41	379.59	536.83
50	111.82	136.95	176.80	193.67	223.63	250.03	273.89	387.34	547.78

\*Range for coded values in tenths, one-sixteenth ounce, one-eighth ounce, or other values.

\*\*Based on sub-sample sizes of 5.

TABLE IV  
Correction Factors

Percent of Lot Sampled	Correction Factor	Percent of Lot Sampled	Correction Factor	Percent of Lot Sampled	Correction Factor
1 $\frac{1}{2}$	.99	34	.81	68	.57
2	.99	35	.81	69	.56
3	.98	36	.80	70	.55
4	.98	37	.79	71	.54
5	.97	38	.79	72	.53
6	.97	39	.78	73	.52
7	.96	40	.77	74	.51
8	.96	41	.77	75	.50
9	.95	42	.76	76	.49
10	.95	43	.75	77	.48
11	.94	44	.75	78	.47
12	.94	45	.74	79	.46
13	.93	46	.73	80	.45
14	.93	47	.73	81	.44
15	.92	48	.72	82	.42
16	.92	49	.71	83	.41
17	.91	50	.71	84	.40
18	.91	51	.70	85	.39
19	.90	52	.69	86	.37
20	.89	53	.69	87	.36
21	.89	54	.68	88	.35
22	.88	55	.67	89	.33
23	.88	56	.66	90	.32
24	.87	57	.66	91	.30
25	.87	58	.65	92	.28
26	.86	59	.64	93	.26
27	.85	60	.63	94	.24
28	.85	61	.62	95	.22
29	.84	62	.62	96	.20
30	.84	63	.61	97	.17
31	.83	64	.60	98	.14
32	.82	65	.59	99	.10
33	.82	66	.58	100	0
		67	.57		

TABLE V  
Maximum Permissible Total Error \*\*

	SAMPLE SIZE								
Range *	10	15	25	30	40	50	60	120	240
0.01-0.19	.42	.52	.67	.73	.84	.94	1.03	1.46	2.06
0.20-0.39	1.26	1.55	2.00	2.19	2.53	2.83	3.10	4.30	6.19
0.40-0.59	2.11	2.58	3.33	3.65	4.21	4.71	5.16	7.30	10.32
0.60-0.79	2.95	3.61	4.66	5.11	5.90	6.60	7.23	10.22	14.45
0.80-0.99	3.79	4.65	6.00	6.57	7.59	8.48	9.29	13.14	18.58
1.00-1.24	4.74	5.81	7.50	8.21	9.48	10.60	11.61	16.42	23.23
1.25-1.49	5.79	7.10	9.16	10.04	11.59	12.96	14.19	20.07	28.39
1.50-1.74	6.85	8.39	10.83	11.86	13.70	15.31	16.77	23.72	33.55
1.75-1.99	7.90	9.68	12.49	13.69	15.80	17.67	19.36	27.37	38.71
2.00-2.24	8.96	10.97	14.16	15.51	17.91	20.03	21.94	31.02	43.87
2.25-2.49	10.01	12.26	15.83	17.34	20.02	22.38	24.52	34.67	49.03
2.50-2.74	11.06	13.55	17.49	19.16	22.13	24.74	27.10	38.32	54.20
2.75-2.99	12.12	14.84	19.16	20.99	24.23	27.09	29.60	41.97	59.36
3.00-3.24	13.17	16.13	20.82	22.81	26.34	29.45	32.26	45.62	64.52
3.25-3.49	14.22	17.42	22.49	24.64	28.45	31.80	34.84	49.27	69.68
3.50-3.74	15.28	18.71	24.16	26.46	30.55	34.16	37.42	52.92	74.84
3.75-3.99	16.33	20.00	25.82	28.29	32.66	36.52	40.00	56.57	80.00
4.00-4.24	17.38	21.29	27.49	30.11	34.77	38.87	42.58	60.22	85.16
4.25-4.49	18.44	22.58	29.15	31.94	36.88	41.23	45.16	63.87	90.33
4.50-4.74	19.49	23.87	30.82	33.76	38.98	43.58	47.74	67.52	95.49
4.75-4.99	20.54	25.16	32.48	35.58	41.09	45.94	50.32	71.17	100.65
5.00-5.24	21.60	26.45	34.15	37.41	43.20	48.30	52.91	74.82	105.81
5.25-5.49	22.65	27.74	35.82	39.23	45.30	50.65	55.49	78.47	110.97
5.50-5.74	23.71	29.03	37.48	41.06	47.41	53.01	58.07	82.12	116.13
5.75-5.99	24.76	30.32	39.15	42.88	49.52	55.36	60.65	85.77	121.29
6.00-6.49	26.34	32.26	41.55	45.62	52.68	58.90	64.52	91.24	129.04
6.50-6.99	28.45	34.84	44.98	49.27	56.99	63.61	69.68	98.54	139.36
7.00-7.49	30.55	37.42	48.31	52.92	61.11	68.32	74.84	105.84	149.68
7.50-7.99	32.66	40.00	51.64	56.57	65.32	73.03	80.00	113.14	160.01
8.00-8.49	34.77	42.58	54.97	60.22	69.54	77.74	85.16	120.44	170.33
8.50-8.99	36.88	45.16	58.31	63.87	73.75	82.46	90.33	127.74	180.65
9.00-9.49	38.98	47.74	61.64	67.52	77.97	87.17	95.49	135.04	190.97
9.50-10.49	42.14	51.61	66.63	72.99	84.29	94.24	103.23	145.99	206.46
10.50-11.49	46.36	56.78	73.30	80.29	92.72	103.66	113.55	160.59	227.11
11.50-12.49	50.57	61.94	79.96	87.59	101.14	113.08	123.88	175.19	247.75
13	54.79	67.10	86.62	94.89	109.57	122.51	134.20	189.79	268.40
14	59.00	72.26	93.29	102.19	118.00	131.93	144.52	204.38	289.04
15	63.22	77.42	99.95	109.49	126.43	141.35	154.84	218.98	309.69
16	67.43	82.58	106.62	116.79	134.86	150.78	165.17	233.58	330.34
17	71.64	87.75	113.28	124.09	143.29	160.20	175.49	248.18	350.98
18	75.86	92.91	119.94	131.39	151.72	169.62	185.81	262.78	371.63
19	80.07	98.07	126.61	138.69	160.14	179.05	196.14	277.38	392.27
20	84.29	103.23	133.27	145.99	168.57	188.47	206.46	291.98	412.92
21	88.50	108.39	139.93	153.29	177.00	197.89	216.78	306.58	433.56
22	92.72	113.55	146.60	160.59	185.43	207.32	227.11	321.18	454.21
23	96.93	118.71	153.26	167.89	193.86	216.74	237.43	335.77	474.86
24	101.14	123.88	159.92	175.19	202.29	226.16	247.75	350.37	495.50
25	105.36	129.04	166.59	182.49	210.72	235.59	258.07	364.97	516.15
26	109.57	134.20	173.25	189.79	219.15	245.01	268.40	379.57	536.79
27	113.79	139.36	179.91	197.08	227.57	254.44	278.72	394.17	557.44
28	118.00	144.52	186.58	204.38	236.00	263.86	289.04	408.77	578.09
29	122.22	149.68	193.24	211.68	244.43	273.28	299.37	423.37	598.73



TABLE V  
Maximum Permissible Total Error\*\*

Range*	SAMPLE SIZE								
	10	15	25	30	40	50	60	120	240
30	126.43	154.34	199.90	218.98	252.36	282.71	309.69	437.97	619.30
31	130.64	160.01	206.57	226.28	261.29	292.13	320.01	452.57	640.02
32	134.86	165.17	213.23	233.58	269.72	301.55	330.34	467.16	660.67
33	139.07	170.33	219.89	240.88	278.15	310.98	340.66	481.76	681.32
34	143.29	175.49	226.56	248.18	286.57	320.40	350.98	496.36	701.96
35	147.50	180.65	233.22	255.48	295.00	329.82	361.30	510.96	722.61
36	151.72	185.81	239.88	262.78	303.43	339.25	371.63	525.56	743.25
37	155.93	190.97	246.55	270.08	311.86	348.67	381.95	540.16	763.90
38	160.14	196.13	253.21	277.38	320.29	358.09	392.27	554.76	784.55
39	164.36	201.30	259.87	284.68	328.72	367.52	402.60	569.36	805.19
40	168.57	206.46	266.54	291.98	337.15	376.94	412.92	583.96	825.84
41	172.79	211.62	273.20	299.28	345.58	386.37	423.24	598.55	846.48
42	177.00	216.78	279.86	306.58	354.00	395.79	433.56	613.15	867.13
43	181.00	221.94	286.53	313.88	362.43	405.21	443.89	627.75	887.78
44	185.43	227.11	293.19	321.18	370.86	414.64	454.21	642.35	908.42
45	189.65	232.27	299.86	328.47	379.29	424.06	464.53	656.95	929.07
46	193.86	237.43	306.52	335.77	387.72	433.48	474.86	671.55	949.71
47	198.07	242.59	313.18	343.07	396.15	442.91	485.18	686.15	970.36
48	202.29	247.75	319.85	350.37	404.58	452.33	495.50	700.75	991.01
49	206.50	252.91	326.51	357.67	413.00	461.75	505.83	715.35	1011.65
50	210.72	258.07	333.17	364.97	421.43	471.18	516.15	729.94	1032.30

\*Range for coded values in tenths, one-sixteenth ounce, one-eighth ounce, or other values.

\*\*Based on sub-sample sizes of 5.

If the total minus error as obtained from the sample is greater than the value determined from Table III after applying correction factor and is less than the value shown in Table V it shall be presumed that a shortage exists in the lot, and additional samples shall be taken before taking official action. When additional samples are taken these shall be included with the original sample, excluding any packages having unreasonable individual errors, and the combination shall be treated as a single sample, and the procedure as set forth in Sections 2933.3.8 to 2933.3.11 shall be followed.

#### FINAL DETERMINATION

If, however, the total error as obtained from the sample exceeds the permissible total error as determined from Table V, with correction factor applied as above, and this is also unreasonable under the provisions of Section 12613 and 12614 of the Business and Professions Code, then it is deemed that a definite shortage exists and appropriate action shall be taken according to the provisions of Section 12211, Division 5, Chapter 2, Article 2 of the Business and Professions Code.

(Example: Since, in the examples previously used, the lot size was 200 and the sample size 15 the percentage is  $7\frac{1}{2}\%$  ( $15 : 200 \times 100$ ) and, therefore, from Table IV the correction factor is .96. Furthermore, from the Example II, the average range is 3.00 and the corresponding value from Table III is 8.56 for a sample size of 15. Then, 8.56 multiplied by .96 equals 8.22. This is the value to be used to indicate a possible shortage, based upon Table III. This also means that any minus total error obtained from the sample must not exceed minus 8.22 for the lot to be acceptable. In Example II the Corrected Total Error is minus 12, which exceeds minus 8.22, so therefore the lot continues to be of doubtful acceptability.

(Example:

The total permissible error for Example II is 15.48, or the value of 16.13 from Table V for the range of 3.00 and sample size of 15, times .96, the correction factor from Table IV. Since the Corrected Total Error of Example II is minus 12, which is less than 15.48, it cannot be presumed a definite shortage exists. Therefore the status of the lot in this Example has not been ascertained definitely by these procedures, and the decision to continue sampling until a definite conclusion can be reached depends upon the discretion of the weights and measures official.)

(c) All packages having a minus error greater than the unreasonable individual error as determined in Section 2933.3.10, and also unreasonable under the provisions of Sections 12613 and 12614 of the Business and Professions Code, shall be held to be in violation and appropriate action shall be taken with regard to these individual packages.

2933.3.13. PROCEDURE TO BE USED. The procedure stated herein shall be used unless the average net content of the lot is determined by 100% sampling (weighing, measuring, or counting the contents of all of the packages in the lot.). The "Sample Sizes" as specified in Table I of this procedure shall be considered as the minimum sample size for a given lot size, and at the Sealer's discretion, may be increased for a given lot size from Table I.

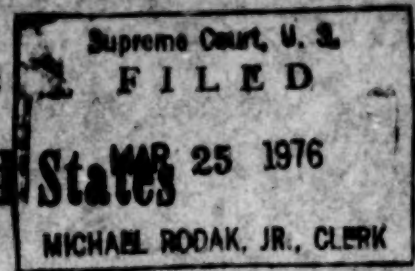
However, the acceptance criteria as set forth in Section 2933.3.12 are to apply in determining appropriate action. Furthermore, packages found to have individual unreasonable errors as determined by Section 2933.3.10 shall be excluded from the calculations of the lot average when using a 100% sample.

2933.3.14. RANGE VARIATION DATA. The Department shall accumulate information and data pertaining to the weight, measure or count range variations of prepackaged commodities and may establish upper and lower control limits to prevent the manipulation of the range factor by any person, firm or corporation.

PROCEDURE: COMMODITIES SOLD BY VOLUME IN "STANDARD-PACK" OR "RANDOM-PACK" PACKAGES:

2933.3.20. All of the procedures set forth in Sections 2933.3 through and including Section 2933.3.13 of this Article shall apply to this procedure.

IN THE  
**Supreme Court of the United States**



October Term, 1975  
Nos. 75-1052, 1053

**L. T. WALLACE** as Director of Food and Agriculture  
of the State of California and **M. H. BECKER** as  
Director of the County of Los Angeles, California,  
Department of Weights and Measures; and

**JOSEPH W. JONES**, as Director of the County of  
Riverside, California, Department of Weights and  
Measures,

*Petitioners,*

**vs.**

**THE RATH PACKING COMPANY**, a corporation,  
*Respondent.*

**On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit.**

**BRIEF IN OPPOSITION.**

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**BRIEF IN OPPOSITION.**

**Opinions Below.**

The Opinion (as corrected) of the Court of Appeals  
for the Ninth Circuit, not yet reported, is set forth  
in the Appendix to Jones' petition (Jones Pet. App.  
1-34).<sup>\*</sup> The Opinion of the District Court for the  
Central District of California (Jones Pet. App. 57-  
68) is reported at 357 F.Supp. 529.

<sup>\*</sup>Citations herein to Jones' petition will be abbreviated as  
Jones Pet.; to Wallace's and Becker's petition, as Wall. Pet.;  
(This footnote is continued on next page)



### **Jurisdiction.**

The jurisdictional requisites are adequately set forth in Wallace's petition (Wall. Pet. 3, errata sheet).

### **Questions Presented.**

Although each of the five questions presented by petitioners (Wall. Pet. 4, Jones Pet. 4) will be responded to as a matter of completeness\*, the only questions of substance are:

1. Whether the Court of Appeals was correct in holding that the Wholesome Meat Act of 1967 precludes California from imposing (on articles prepared at Rath's establishments under inspection by the United States Department of Agriculture in accordance with the requirements under the Wholesome Meat Act) *state* labeling requirements (as to the accuracy of statements on the label as to net weight of contents) which are "in addition to and different than" *federal* labeling requirements made under the Wholesome Meat Act of 1967.

2. Whether the Court of Appeals was correct in rejecting petitioners' contention that a United States Department of Agriculture regulation (9 C.F.R. § 317.2(h)(2)) is void for vagueness because it permits "reasonable" variations from exact accuracy of labeled

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and to an Appendix, as App. Citations to the clerk's transcript and reporter's transcript in the Wallace-Becker case are C.T. and R.T., respectively; in the Jones case, J.C.T. and J.R.T. Citations to the Opinion of the Court of Appeals will be abbreviated as Opin., followed by a citation to the page in Jones Pet. App.

\*Rath will not respond to Jones' arguments about liquor prohibition and taxation, which are so irrelevant that they deserve only to be ignored—as was done by the Court of Appeals.

net weight—viz., a contention that "reasonable" is vague as to amount.

3. Whether the Court of Appeals was correct in holding that the specific California net weight labeling requirements in issue are "in addition to and different than" the net weight labeling requirements of the Wholesome Meat Act of 1967 and of regulations promulgated thereunder.

### **Constitution, Statutes and Regulations Involved.**

The pertinent constitutional provisions, statutes and regulations are:

#### **Federal**

Constitution of the United States, Article VI, Clause 2 (Wall. Pet. App. 59);

Wholesome Meat Act of 1967, 81 Stat. 584, 21 U.S.C. section 601 et seq.\* (specifically, sections 601(n), 678—Wall. Pet. App. 59-60, 65-67);

9 Code of Federal Regulations section 317.2(h)(2) (Wall. Pet. App. 67-68).

#### **California**

Business and Professions Code, section 12211 (Jones Pet. App. 69);

4 California Administrative Code, Chapter 8, subchapter 2, Article 5 (Wall. Pet. App. 97-113).

### **Statement of the Case.**

Respondent The Rath Packing Company ("Rath") cannot accept petitioners' statements of the case (which grossly deviate from the record and which understand-

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\*The constitutionality of this Act never has been drawn into question in these actions.

ably contain no citations thereto\*) or their description of the proceedings below. As will be demonstrated, petitioners' presentation is not fair to the Court of Appeals, to the District Court, to the issues or to the record.

This brief in opposition is solely by *Rath* and pertains only to the Wholesome Meat Act of 1967 and to meats and meat food products prepared under inspection by the United States Department of Agriculture ("USDA"). The Food, Drug and Cosmetic Act and the Federal Fair Packaging and Labeling Act are not in issue in the *Rath* case.\*\*

It should be emphasized at the outset that there never was any evidence in this case as to the laws of any state other than California.\*\*\* The injunction ordered by the Court of Appeals pertains only to two California statutes and two regulations thereunder, and the petitions are limited to only one of these statutes and to only one of these regulations (Wall. Pet. 4; Jones Pet. 5). Moreover, the injunction further is limited to enjoining enforcement of these state laws only as to articles prepared under the Wholesome Meat Act of 1967 and under USDA inspection pursuant thereto.

Contrary to petitioners' repeated harangue about "truth-in-packaging", "true weights", "fraud in the marketplace", etc., this is not a "consumer protection"

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\*Petitioners have taken unfair advantage of the current practice of not transmitting the record for corroboration in reviewing petitions for certiorari.

\*\*The Amici Curiae Brief of 33 States does not pertain to the *Rath* case.

\*\*\*The Amici Curiae Brief of Michigan, *et al.* deals with state laws supposedly based on a Handbook 67 (see Argument, part III, *infra*), none of which was involved in the *Rath* case.

case at all. The USDA possesses and uses ample authority to protect the consumer (21 U.S.C. §§ 672, 673), including without limitation at the retail level [R.T. 89], and petitioners' witness from the USDA (Hutchings) made it clear in one of the state court cases that the USDA does not need and has not sought any help from California in taking misbranded meat food products off sale at the retail level (App. 1-5). This simply is a test case, with Rath as the pawn, whereby California is seeking to ascertain how far it can go to extend its bureaucracy into a federal area.

Rath is an Iowa corporation, and is a meat processor engaged in interstate commerce and therefore subject to inspection pursuant to the terms of the federal Wholesome Meat Act of 1967 (the "Act") [C.T. 317-318]. Rath has been granted inspection by the USDA [C.T. 318] and USDA inspectors are assigned to the Rath establishment to enforce the Act and its regulations [R.T. 34-35]. USDA inspectors inspect the Rath establishment continuously and have access to all parts of the plant at all times [R.T. 83, 91].

Among Rath's meat food products is bacon, which is packaged in containers that are sold by retail stores [C.T. 318]. The facts of this case are limited to bacon but are equally applicable to other Rath meat food products subject to the Act [C.T. 319].

Part of the USDA inspection includes the inspection of labeled net weight of bacon before it leaves Rath's establishment [R.T. 53]. The Act contains a labeling requirement at 21 U.S.C. § 601(n)(5) which provides that:

"(n) The term 'misbranded' shall apply to any . . . meat or meat food product . . . (5) if in a



package . . . unless it bears a label showing . . . (B) an accurate statement of the quantity of the contents in terms of weight . . . : *Provided*, That under clause (B) of this subparagraph (5), reasonable variations may be permitted . . . by regulations prescribed by the Secretary."

Pursuant to this statute and its proviso, Title 9 Code Federal Regulations § 317.2(h)(2) provides that:

"Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large."

Hence, the federal *statute* literally requires each package of bacon to bear an accurate statement of net contents (no overpack, no underpack); however, the *regulation* relaxes this literal standard by recognizing reasonable variations from exact accuracy caused (1) by unavoidable deviations in good manufacturing practice and/or (2) by loss or gain of moisture during the course of good distribution practices.

Both of the recognized causes for reasonable variation are in accordance with reality. First, even under the best of good manufacturing practices, most packages will have some minor but unavoidable deviation from exact weight. It would be economically impossible to manufacture each package of sliced bacon with an exact weight of one pound, no more, no less—the time and cost would be prohibitive. Rath bacon in issue was packed within a pass zone of 10/16 ounce, centered upon a target or average weight as a midpoint [R.T. 138]. As of April 1, 1971, Rath's target weight

for one pound bacon was + 3/16 ounce over stated net weight; because of the off sale activities of petitioners, the target weight or overpack was changed to + 5/16 ounce on October 27, 1971, to + 7/16 ounce on January 12, 1972, and to + 12/16 ounce on March 2, 1972 [R.T. 99-101, 146-147]. These net weight compliance procedures of Rath always had full USDA approval [R.T. 52]; there was not a scintilla of evidence that Rath ever failed to follow good manufacturing practice.

Second, because of its moisture content, bacon in a nonhermetically sealed package (viz., not air tight) will lose moisture after being packaged and during the course of good distribution practices [R.T. 242, 273, 289-290]. One pound of bacon will lose approximately 1/16 ounce of moisture by evaporation between the time it is packaged and weighed and the time it leaves Rath's establishment [R.T. 133, 146, 166]. At all times, the average net weight of all bacon leaving Rath's establishment was greater than labeled net weight [R.T. 106]—viz., it was the weight of the aforesaid average overpack less the 1/16 ounce moisture loss between the time of packaging and time of leaving the establishment [R.T. 147-148].

Hence, the label of each package of bacon leaving Rath's establishment showed an accurate statement of net weight subject only to a reasonable variation caused by unavoidable deviations in good manufacturing practice. The statement in Wallace's petition (Wall. Pet. 25 fn) that packages of bacon left Rath's establishment in violation of the Act is inexcusably false—the uncontroverted evidence was that the USDA sub-area supervisor for Southern California knew of no bacon leaving the Rath establishment during the time period in issue

that was not in compliance with the labeling and net weight requirements of the Act and its regulations, and USDA records showed none [R.T. 67-69, 106]. There was no evidence that Rath had violated federal weight standards in any way (Opin., Jones Pet. App. 3).

After leaving Rath's establishment, the same one pound package of bacon will continue to lose about .3 to .4 sixteenths of an ounce of moisture per day by evaporation during the course of good distribution practice [R.T. 172-173]. Also, the wrapper of the same bacon (using a wax saturated insert board) will absorb about 5/16 ounce of moisture and grease from the bacon during such distribution [R.T. 170-172]. There was no evidence that any bacon in issue had been subjected to other than good distribution practice.

Hence, the label of each package of bacon in issue showed an accurate statement of net weight subject only to a reasonable variation caused by unavoidable deviations in good manufacturing practice and/or by loss of moisture during good distribution practice.

In the latter part of 1971 and the early part of 1972 petitioners' inspectors conducted concentrated inspections of bacon [R.T. 210-211, 227a, 248], checking not for quality or adulteration but only for the accuracy of the statement of net weight on the label [R.T. 209]. The accuracy was checked by a weighing procedure for determining net weight set forth in Title 4, California Administrative Code, Chapter 8, subchapter 2, Article 5 (Wall. Pet. App. 97-113), as supposedly authorized by Business and Professions Code § 12211 (Jones Pet. App. 69), which actually is a procedure intended to result in a "statistical estimation" of the *average* net weight of a number or "lot"

of packages at the time of inspection—generally applied by the inspectors at the retail store [C.T. 318-319; R.T. 212, 215-216, 295, 316].\* Article 5 makes no distinction between products that lose moisture and those that do not; nor does it make provision for any weight variations caused either by unavoidable deviations in good manufacturing practice or by loss of moisture during good distribution practice (Opin., Jones Pet. App. 6). As conceded in Wallace's petition (Wall. Pet. 5, 12), the California standard was "accurate-weight-on-the-average at retail".

If the inspector estimated that the average net weight of the lot was "short weight" even by as little as 1/16 ounce (less than 1/2 of 1%), all packages in the lot (including exact weight and overweight packages\*\*—J.C.T. 73, 75) were ordered off sale—with no consideration as to the cause of the short weight [R.T. 216, 237] and with no recognition whatsoever of any reasonable variation as required by the federal regulation (Opin., Jones Pet. App. 6). No consideration was given to whether the packages had left Rath's plant in compliance with the Act or with an average net weight equal to labeled net weight [R.T. 218], nor to the kind of distribution practice that the bacon had been subjected to after leaving Rath's plant [R.T. 216-217], nor to whether the short weight was the result of loss of moisture during the course of good

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\*Although the Opinion of the Court of Appeals discusses two statutes (§§ 12211, 12607) and two regulations (Articles 5, 5.1), the petitions (and hence this brief in opposition) are confined to § 12211 and Article 5.

\*\*The Amici Curiae Brief of 33 States, at p. 14, argues that off sale activity which includes overweight packages "is hardly prudent or sensible. It does not help consumers and is expensive for packagers".



distribution practice [R.T. 218-219, 240, 274, 293-294, 310]—and yet loss of moisture by evaporation during the course of distribution was a primary reason why petitioners (using the California weighing procedure) found short weight in Rath's bacon at retail [R.T. 185]. Any bacon ordered off sale was thereby effectively a total loss to Rath [R.T. 142, 110, 102].

Even the USDA weighing procedure for net weight determination is different from the California weighing procedure and, whether the two procedures are applied to the same bacon simultaneously or at different times, the differences between the two procedures can lead to a different conclusion as to whether the bacon is accurately labeled [R.T. 180-181, 184-185, 304, 427, 429-430]. The USDA procedure for net weight determination is to subtract from gross package weight the weight of a dry wrapper ("dry tare") [R.T. 86-87, 173-174]. In contrast, the California procedure for net weight determination is to subtract from gross package weight not only the weight of the dry wrapper but also the weight of the moisture and grease absorbed into or retained on the wrapper ("wet tare") [R.T. 174, 234]. The California procedure of subtracting the wet tare leads to a net weight determination for a pound of bacon of approximately 5/16 ounce less than the USDA procedure using the dry tare [R.T. 176, 425]. The average "short weight" for which Becker ordered Rath's bacon off sale was 4/16 ounce [R.T. 181-182], which is less than the net weight difference resulting from the difference in weighing procedures alone.

The Court of Appeals held that application of the California requirements to Rath's meat food products should be enjoined. First, the Act (21 U.S.C. § 678) expressly ordains that no state can impose a labeling requirement which is in addition to or different than the federal labeling requirements; second, the federal regulations include a valid labeling requirement that reasonable variation from accurate weight be recognized when caused by unavoidable deviations in good manufacturing practice and/or by loss of moisture in the course of good distribution practice; third, both the District Court and the Court of Appeals found, as a factual determination, that the California labeling requirements are in addition to and different from the federal labeling requirements.

## ARGUMENT.

### I

#### The Decision Below Is Clearly Correct.

- a. **The Wholesome Meat Act of 1967 Preempts and Precludes California From Imposing State Labeling Requirements That Are Different From Federal Labeling Requirements.**

The Act, 21 U.S.C. § 678, expressly preempts the imposition of labeling requirements (*i.e.*, label statements of net weight) by providing that:

“Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State. . . .”

The validity of this express “clear and complete” preemptive provision of 21 U.S.C. §678 heretofore has been upheld by the Sixth Circuit in *Armour and Company v. Ball*, 468 F.2d 76, 85 (6th Cir. 1972), cert. den. 411 U.S. 981 (1973). In fact, petitioner Jones concedes preemption [J.C.T. 83; J.R.T. 26, 29-31].

Since the Act literally defines “misbranded” as a term describing the failure to meet the Act’s labeling requirement of showing a statement of net weight that is accurate (21 U.S.C. § 601(n)(5)) subject to reasonable variation from two specified causes (9 C.F.R. § 317.2(h)(2)), the courts below correctly held that the express federal preemption of labeling requirements included a preemption of defining what is misbranded (Opin., Jones Pet. App. 28fn). The district court put it about as succinctly as possible: “Common sense tells us that mislabeling and misbranding are synonymous terms.” (357 F.Supp. 529, 535).

Although the Act, 21 U.S.C. § 678, allows the states to “exercise concurrent jurisdiction with the Secre-

tary . . . for the purpose of preventing the distribution . . . of any such articles which are . . . *misbranded* and are outside of [the packing plant]. . . .”, the article must be “misbranded” within the definition of the Act. Hence, if California elects to exercise such “concurrent jurisdiction” with the Secretary to prevent distribution of a “misbranded” article, California must use the same standard of “misbranded” as does the Secretary. In short, California’s concurrent jurisdiction is limited to preventing the distribution of meat food products which are “misbranded” as that term is defined by the Act; California cannot impose a labeling requirement which is different from the labeling requirements of the Act by imposing a definition of “misbranded” which is different from the definition of the Act—yet, this is exactly what California’s § 12211 and California’s Article 5 do and that is why the courts below have enjoined their application (Opin., Jones Pet. App. 28-29).

In a case of express preemption such as set forth in 21 U.S.C. § 678, there is no need to find that the state system stands in opposition to the federal.

“When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go. . . . The legislation is not saved by calling it an exercise of the police power. . . .”

*Charleston v. W.C.R. Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604.

Even so, opposition in this case is clear—the state is ordering articles off sale even though the articles comply with the Act.



**b. Federal Labeling Requirements Include Recognition of Reasonable Variations Arising From Two Specific Causes.**

The only ground ever argued by petitioners for invalidity of the federal "reasonable variation" regulation (which recognizes reasonable variations caused (1) by unavoidable deviations in good manufacturing practice and/or (2) by loss of moisture during the course of good distribution practices) was that the term "reasonable" made the regulation void for vagueness. As the Court of Appeals aptly pointed out, the test of being "reasonable" is too well established in the law to be challenged now (Opin., Jones Pet. App. 20-22). Moreover, there is something inherently wrong in a state arguing that a federal law is vague as to the amount of protection to be provided to a citizen, and hence that the law is void and that the citizen should get no protection at all!

No evidence was offered by any petitioner as to why the well recognized and long-standing standard of "reasonable" was vague or could be replaced by a more accurately defined limit. Although petitioners now try to convince this Court that the regulation imposes such an inordinate hardship in their inspection activities, it is remarkable that they did not challenge it or contend it to be void for vagueness until the district court judge suggested the issue after the close of evidence (Opin., Jones Pet. App. 18). In fact, counsel for petitioner Jones told the district court, "Well, we don't challenge the validity of (h)(2) . . . Frankly, I hadn't considered whether it is valid or not. . . ." [J.R.T. 49].

Not only is the recognition of reasonable variation sensible to the point of being essential, but moreover

the concept of federal statutes permitting the recognition of reasonable variations by regulation, and of regulations so providing, has existed for over half a century. The Federal Food and Drug Act of 1906 as amended in 1913 (34 Stat. 768, 37 Stat. 732) provided:

"that an article of food shall be deemed to be misbranded—

\* \* \*

"Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, That reasonable variations shall be permitted . . . by rules and regulations made in accordance with the provision of § 3 of this Act."

Under this statute, and the authority conferred therein, federal regulations were adopted in 1914 [Reg. 29, 5/11/1914, C.T. 887] which said:

"(i) The following tolerances and variations from the quantity of the contents marked on the package shall be allowed:

"(1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.

\* \* \*

"(3) Discrepancies in weight or measure, due exclusively to difference in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

"Discrepancies under classes (1) and (2) of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case."

In 1932, in *United States v. Shreveport Grain & E. Co.*, 287 U.S. 77 (1932), the United States Supreme Court upheld the validity of the "reasonable" variation provisions of the Food and Drug Act, as amended in 1913, and its regulations of 1914. The court held (1) that the statute properly gave "administrative authority to the Secretaries of the Treasury, Agriculture, Commerce and Labor to make rules and regulations permitting reasonable variations from the hard and fast rule of the act", and (2) that the regulations properly provided for reasonable variations (with no more exact tolerance being specified) caused by errors in weighing which occur in good commercial packing practice or from loss of moisture during distribution. The court said, "These regulations, which cover variations . . . , have been in force for a period of more than eighteen years, with the silent acquiescence of Congress."

On July 12, 1933, only seven months after the *Shreveport* decision, a bill was introduced in Congress to revise the Food and Drug Act completely, but the requirement pertaining to labeling of contents was proposed to be reenacted in substantially the same form as in the 1913 amendment (See C. Dunn, *Federal Food, Drug, and Cosmetic Act*, 29, 39 (1938)). Through the following five years of legislative hearings and revisions, during which time the bill was extensively debated and studied, the language of the weight-labeling

requirement remained unchanged until it was enacted in 1938 (52 Stat. 1040). The reason for relatively little change from the 1913 amendment was the intention to carry over the same law. W. A. Campbell, Chief of the Food and Drug Administration, testified before the Senate Commerce Committee that the proposed revision was "the language of the law at the present time." *Hearings on S.2800*, 73d Cong., 2d Sess. (1934) in C. Dunn, *supra*, at 1166. The committee report subsequently noted that the labeling requirement in the bill "merely repeats the provisions of the present law." S.Rep.No. 361, 74th Cong., 1st Sess. (1935) in C. Dunn, *supra*, at 245.

The current Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 *et seq.*), as enacted in 1938 and subsequently amended, requires that labels of foods covered by that act shall bear "an accurate statement of the quantity of the contents in terms of weight . . . : *Provided*, That . . . reasonable variations shall be permitted . . . by regulations prescribed by the Secretary." (21 U.S.C. § 343(e)). The current federal Fair Packaging and Labeling Act (15 U.S.C. § 1451 *et seq.*), as enacted in 1966 and subsequently amended, is to the same effect (15 U.S.C. §§ 1453, 1460). And the federal regulations promulgated under both of these acts, at 21 C.F.R. § 1.8b(q), provide that "Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized."\*

\*The United States Department of Justice filed with the Court of Appeals a "Brief of the United States as Amicus Curiae" in the consolidated case of *Jones v. General Mills, Inc., et al.* This brief argued *inter alia* for the validity of 21 C.F.R. §§ 1.8b(q)—and the reasoning is sufficiently applicable to 9 C.F.R. § 317.2(h)(2) that said brief is reproduced in the Appendix hereto—App. 6-25.



In 1967 Congress passed the federal Wholesome Meat Act of 1967. And in the regulations at 9 C.F.R. § 317.2(h)(2), following the pattern set by over a half century of federal laws and court decisions, the Secretary adopted the same reasonable variation regulation as already had been adopted in 21 C.F.R. § 1.8b(q).

The long-standing existence of "reasonable variation" regulations and the reenactment by Congress of the net weight labeling provisions of the Federal Food, Drug, and Cosmetic Act in 1938 (and enactment of the federal Fair Packaging and Labeling Act (1966) and of the Wholesome Meat Act of 1967), in essentially the same form as reviewed in *United States v. Shreveport Grain & E. Co.*, 287 U.S. 77 (1932), are highly indicative of validity.

When Congress reenacts a statute in substantially the same form, it is presumed to have adopted any prior judicial construction of the language (*Shapiro v. United States*, 335 U.S. 1, 16 (1948); *Dragor Shipping Corp. v. Union Tank Car Co.*, 371 F.2d 722, 726 (9th Cir. 1967)), and administrative interpretations of the prior statute also are deemed to have received congressional approval and to have the effect of law (*Commissioner v. Noel Estate*, 380 U.S. 678, 682 (1965); *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U.S. 110, 114-115 (1939); *NLRB v. Brooks*, 204 F.2d 899, 905 (9th Cir. 1953), *aff'd* 348 U.S. 96 (1954)).

**c. California Labeling Requirements Are Different From Federal Labeling Requirements.**

Both the Court of Appeals and the District Court found as a fact that California's net weight labeling requirements are different from federal net weight labeling requirements (Opin., Jones Pet. App. 6, 67).\*

California's labeling requirement is of accurate-weight-on-the-average; the federal statutory requirement (sans regulation) is accurate weight as to each package—no averaging. Hence, California's requirement is different from the federal requirement if only the federal statute is considered.

Both the Court of Appeals and the District Court found that California's labeling requirements contain no provision for recognition of reasonable variation caused either by unavoidable deviations in good manufacturing practice or by loss of moisture during the course of good distribution practice (Opin., Jones Pet. App. 6, 28); the federal regulation requires such recognition. Hence, California's requirement is different from the federal requirement if the federal regulation is considered along with the federal statute.

Finally, both the Court of Appeals and the District Court found that "the California inspectors employed a different weighing method" than the federal weighing method (Opin., Jones Pet. App. 4), this difference alone accounting for more supposed short weight than the average short weight alleged to exist by petitioners.

The difference between California law and the Wholesome Meat Act of 1967 is readily understandable.

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\*Petitioners recently filed an affidavit with the Court of Appeals conceding that California inspectors could not "enforce the weights and measures laws of California" if they are required to recognize the "standard" of 9 C.F.R. § 317.2(h)(2).

California's laws (§ 12211 and Article 5) antedate the Act and thus never were intended to comply with it. California's laws are applied across-the-board to every commodity that is inspected (Wall. Pet. 5)—it is not surprising that California laws designed for counting pills in a bottle or pins in a box, or for weighing applesauce in a sealed can, are different from a federal net weight labeling law which is specifically intended to recognize the unique problems encountered in manufacturing and distributing meats and meat food products that are pre-packaged in non-hermetically sealed packages.

**d. Summary.**

The Act expressly preempts and precludes California from imposing different labeling requirements. California's labeling requirements are different—hence, the courts have enforced the Act by enjoining imposition of California's different requirements. It is as simple as that. If California wants to enact and enforce requirements that are not different, it is free to do so (Opin., Jones Pet. App. 29).

Unless bacon is to be packaged in a hermetically sealed container, the bacon will lose moisture (and weight) from the day it is sliced and packaged (the mandatory use of a more expensive hermetically sealed container to prevent the loss of non-nutritional moisture is not in the consumer's interest). Petitioners argue that the bacon must weigh labeled net weight on the day it is purchased by the consumer, however long this may be after manufacture. This means it must be overpacked when leaving the establishment—but not even petitioners know by how much because no one knows how long it will be before the bacon

is sold [C.T. 184-185]. However, whatever the overpack selected by any individual packer, the customer would pay more for it—no lawsuit is going to furnish the consumer something for nothing. As discussed more fully in the Amicus Curiae brief filed below on behalf of the United States by the Department of Justice, this alternative of indefinite and voluntarily selected overpacks has the disadvantage for the consumer that he no longer can accurately compare price with weight, from brand to brand, because the overpacks will not be uniform among brands (App. 18-21).

On the other hand, if all bacon is subjected to the same federal net weight label requirements when it leaves the establishment (which is the last time the packer can control it), then every customer will get the same amount of nutritional substance when the bacon is purchased—the only weight difference will be due to non-nutritional moisture loss. This alternative, selected by Congress, promotes certainty and uniformity.

**II**

**There Is No Conflict of Decision.**

The decision below holds that the Act preempts "marking, labeling, packaging [and] ingredient requirements" because "Congress has unmistakably so ordained" (Opin., Jones Pet. App. 26-27).

The Sixth Circuit heretofore likewise has held that the Act preempts "marking, labeling, packaging [and] ingredient requirements":

"... in view of the clear and complete preemption ordained by Congress, this Court must enforce the Supremacy Clause and declare that



the Federal Act preempts certain provisions of the Michigan Law.”

*Armour and Company v. Ball*, 468 F.2d 76, 85 (6th Cir. 1972), *cert. den.* 411 U.S. 981 (1973).

This preemption precludes the imposition of any labeling requirements which are “in addition to, or different than those made under” the Act (21 U.S.C. § 678).

The decision below does not deal with the same matter that was involved in the Second Circuit affirmance (without any opinion) of *General Mills, Inc., et al. v. Furness*, 398 F.Supp. 151 (S.D.N.Y. 1974), *aff’d* 508 F.2d 836 (2d Cir. 1975) (Jones Pet. App. 95-109), and is not contrary to any principle thereof. First, *Furness* did not deal with the Wholesome Meat Act of 1967 and never considered the express preemption clause of 21 U.S.C. § 678. As Jones says, “Section 678 has no counterpart in the Federal Food, Drug and Cosmetic Act” (Jones Pet. 19).

Second, the district court in *Furness* observed that “Both the city ordinance and federal regulation permit reasonable variations caused by loss of moisture during the course of good distribution practice.” (Jones Pet. App. 97, 105-106); and held that the federal action was premature because the city ordinance imposed no penalty until and unless a state court action was filed wherein the manufacturer could attempt to justify such variations even greater in amount than allowed by the inspector, and such state court action had not yet been filed (Jones Pet. App. 108). California labeling requirements, in marked contrast, recognize absolutely no such variation whatsoever.

The point that petitioners refuse to understand is that the preemption is as to state imposition of labeling requirements that are *different* from federal labeling requirements. The court in *Furness* felt that there had not been proof of a difference between New York City and federal requirements; the difference between California and federal requirements is uncontroverted.

### III

#### **There Is No Important Question of Federal Law.**

The Opinion below pertains to only two California statutes and to only two California regulations thereunder—and then only to their application to meat food products previously inspected as to net weight by the USDA. No other state has been alleged or shown to have either the same or similar labeling requirements as California. It is a fact that California’s Article 5 is not employed by any other state!

Petitioners misstate that California’s labeling requirements, similar requirements of other states and Handbook 67 “preserve the single national standard of accuracy” (Jones Pet. 8-12, 21-23). There was not a scintilla of evidence to justify this statement or the arguments associated with it. There was no evidence whatsoever as to the laws of any state other than California—viz., no evidence to justify petitioners’ wholly unfounded arguments based on supposed “present state laws which require a uniform standard of accuracy” (Wall. Pet. 15-16). To the contrary, it is the federal Act which Congress intends shall create a “uniform national labeling standard” (Opin., Jones Pet. App. 27).

Handbook 67 is wholly irrelevant, although it is the basis upon which other states have lent their support to the petitions for certiorari—Handbook 67 was never in issue nor in evidence (neither was any Model State Weights and Measures Law). Moreover, Handbook 67 is materially different from California's requirements, *i.e.*:

Handbook 67 recognizes net weight variations caused by moisture loss occurring during the course of good distribution practices (App. 27-28; Model State Packaging and Labeling Regulation 1975, App. 37-38). In fact, the author of Handbook 67 testified before the district court in *Furness* that proper application of Handbook 67 recognizes variations from moisture loss as *additional* to the variations allowed by the "Unreasonable Minus or Plus Errors" tabulation in the Handbook (App. 31-36). In contrast, California does not recognize variations caused by moisture loss at all. California admits that its laws are not designed to "determine the *cause* of a discrepancy from label weight" (Amici Curiae Brief of 33 States, p. 15).

Handbook 67 recognizes that "greater liberality" must be exercised in determining the reasonableness of variations caused by "good manufacturing practice in 'packages containing large individual elements', such as slices of bacon (App. 29-30). California does not; California actually complains about the fact "that the federal standard must vary depending upon the product involved" (Jones Pet. 21).

Handbook 67 recognizes that "the experience and judgment of the inspector must be relied upon" in "the building up of a working knowledge as

to . . . what may be considered to be 'good distribution practice' with respect to the packages of an individual commodity that may gain or lose weight through gain or loss of moisture" (App. 27-28). California, to the contrary, concedes that it is "impossible" for an inspector enforcing California laws to determine the cause of a net weight variation or to determine whether it is reasonable (Amici Curiae Brief of 33 States, p. 16).

Considering such differences between Handbook 67 and Article 5, it is inexcusable for petitioners to represent that "The methods employed under Article 5 and Handbook 67 preserve the single national standard of accuracy. . . ." (Jones Pet. 23).

The Opinion of the Court of Appeals turns upon its own facts and solely upon California law. The laws of other states, and the procedures used in enforcing them, would not be reached in any review of the Opinion.

#### IV

##### **There Is No Jurisdictional Question.**

The supposed jurisdictional question raised by petitioner Wallace (Wall. Pet. 20-24) evaporates under an accurate presentation of the facts.

On February 17, 1972 and March 1, 1972, respectively, the district attorneys for Riverside and Los Angeles counties filed separate actions in the name of The People of the State of California against Rath in their respective county superior courts. These complaints did not involve any petitioner herein, nor the issue of off sale orders, nor federal law, nor any statute or regulation now in issue. These actions sought



money and injunctive relief for alleged violation of California Business and Professions Code § 17500, Health and Safety Code § 26550 and Civil Code § 3369 (Jones Pet. App. 7, Wall. Pet. 6fn). Rath removed both actions to the district court on grounds of diversity, whereupon each was promptly remanded for lack of diversity in that The People of the State of California are not deemed citizens of any state for diversity purposes. The remand order specifically noted the absence of any federal question on the face of the pleadings.

On March 17, 1972 (prior to filing any pleading in either state court action) Rath commenced the two actions at bench by filing complaints in the federal district court against Jones and Becker, as directors of the departments of weights and measures of Riverside and Los Angeles counties, respectively. These actions sought to enjoin off sale activity. Jurisdiction was based on 28 U.S.C. § 1331(a). Contrary to petitioners' misstatements (Wall. Pet. 7-8), these actions were the *first* to challenge the legality of each petitioner's off sale orders of Rath's meat food products and were the *first* to involve California Business and Professions Code § 12211 and Title 4, California Administrative Code, Chapter 8, subchapter 2, Article 5. Petitioner Becker was served March 20, 1972.

These federal actions were not a "defense" to the state actions, as manifested by the fact that the Los Angeles County action has gone to trial (Rath prevailed) and the Riverside County action currently is

awaiting trial.\* Moreover, petitioners fail to state that the pre-trial conference order in the district court specifically provided that "There is no issue in this action related to Health and Safety Code § 26550, Business and Professions Code § 17500 or Civil Code § 3369" [C.T. 324]—which were the only statutes involved in the state court complaints.

Hence, the federal district court was first to acquire jurisdiction of the controversy as to the off sale activity under section 12211 and Article 5, upon which the petitions for certiorari are based (Opin., Jones Pet. App. 16). The application of the law as to jurisdiction based on these facts is well set forth in the Opinion of the Court of Appeals and will not be repeated here (Opin., Jones Pet. App. 9-18).

## V

### There Is No Question of Unclean Hands.

Petitioner Wallace argues that Rath had unclean hands because packages of bacon allegedly were short weight in violation of 21 U.S.C. § 607(b) at the time of shipment from Rath's plant (Wall. Pet. 24-25). The argument is false and unconscionable. As the Court of Appeals and the District Court both found, "There is no evidence that Rath has violated federal weight standards in any way." (Opin., Jones Pet. App. 3). Every Rath package complied with federal

\*California appellate courts, reviewing preliminary proceedings in each state action, have paid no heed to petitioners' arguments against priority of the federal actions (*People v. Rath Packing Co.*, 44 Cal.App. 3d 56, 60 (1974); *Christensen v. Superior Court*, 32 Cal.App. 3d 749, 754 (1973)).

law and USDA requirements [R.T. 67-69, 106] and each of the three courts which has decided the issue has held that there was no false labeling.

**Conclusion.**

Congress has recognized the practical obstacles to requiring absolute true net weight of moisture bearing foods at retail, and has legislated accordingly. So long as all packers are held to the same standard, neither Rath nor any other packer has an advantage over competitors—and the consumer is fully protected. Whether petitioners agree with Congress really is irrelevant.

For each of the reasons set forth herein, it is respectfully submitted that the petitions for a writ of certiorari should be denied.

Respectfully submitted,

DEAN C. DUNLAVEY,

GIBSON, DUNN & CRUTCHER,

*Attorneys for Respondent*

*The Rath Packing Company.*

## APPENDIX



1 MR. DUNLAVEY: Your Honor, could I ask that question be  
2 read?

3 THE COURT: Surely.

4 (Question read.)

5 THE WITNESS: No.

6 MR. GRAHAM: Nothing further.

7 MR. GOODMAN: No questions, your Honor.

8  
9 CROSS EXAMINATION

10 BY MR. DUNLAVEY:

11 Q Mr. Hutchings, you undoubtedly are aware of the  
12 provisions of the Wholesome Meat Act of 1967, are you not?

13 A Yes, sir.

14 Q And since you are on the compliance staff you are  
15 probably particularly familiar with those sections of the  
16 Act that have to do with enforcement concerning misbranding;  
17 would that not be true?

18 A That's correct.

19 THE COURT: I did not hear that last.

20 MR. DUNLAVEY: The question was whether he was not  
21 particularly familiar with those portions of the Federal Act  
22 that have to do with the enforcement of misbranding.

23 THE COURT: Oh, misbranding is the word I did not get.  
24 All right. Fine.

25 Q BY MR. DUNLAVEY: When I said "misbranding", you  
26 understood it to include the question of whether the label is  
27 right as to the weight of contents, did you not?

28 A That is correct.

Q You are aware, I think, as you said, that your department and, apparently, you have the power to detain meat at the retail level if you find it to weigh less than the labeled net weight; is that not true?

A That is correct.

Q And your department -- and, apparently, you have the power to condemn that meat; is that not the case?

MR. GRAHAM: What does counsel mean by "condemn"?

MR. DUNLAVEY: It is a statutory word.

Q Do you know what it means?

A Yes. It means within meat inspection, yes. Now, wait a minute. I did not answer your question yes. Your question, we do not have the power to condemn a product.

Q What do you do with it after you detain it?

A There are three alternatives that are given to the persons that own that product. First alternative is to bring about voluntary compliance, whatever the problem is, if they will take care of it themselves.

Second alternative is voluntary condemnation by the owner of that product, not by USDA, but by them, and third alternative is litigation in the courts and the courts make a decision what will be done with the product.

Q And that would be Federal Court, wouldn't it?

A Yes, sir, sure would.

Q Now, whether you are going to take that kind of action, apparently, depends upon your evaluation of information that you receive; is that a correct understanding?

A That is correct.

Q And I gather you will take that information from wherever it comes, whether it be a government agency or a consumer, any source at all; is that not true?

A That is correct.

Q And you say you rely upon that information; do I infer correctly that you evaluate it, decide whether it is right or wrong, decide how important it is and then you either conclude to go ahead and detain or to pass it?

A That is correct.

Q Am I correct that from 1971 to the present time you have never detained any Rath product?

MR. GRAHAM: Objection.

THE COURT: Overruled.

THE WITNESS: I can't honestly answer your question because I would have to go to our records to determine that. You got to remember that we detain something like about nine and a half million pounds of products in the Western area and I have other people that work for me and I really couldn't answer that honestly.

Q All right. I will take your personal knowledge. You have testified twice in this matter. Do you have any personal knowledge of any Rath product ever having been detained by your department from 1971, 1972, 1973?

A To my knowledge, no.

Q Have you been authorized by your department to appear here as a witness today?

A Yes, sir.

Q Is it your intention to testify to this Court that



1 your United States Department of Agriculture does not have enough  
2 personnel in order to do the job that is allotted to it by  
3 statute?

4 MR. GRAHAM: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: It is my intention to tell the facts, sir,  
7 whether I have enough personnel or not, I don't believe,  
8 really, enters into it.

9 Q BY MR. DUNLAVEY: Is it your testimony your Depart-  
10 ment has more authority than it has more manpower to enforce?

11 MR. GOODMAN: Objection. Argumentative.

12 THE COURT: Overruled.

13 MR. GRAHAM: I would object that it is irrelevant. We  
14 are talking about the effect of their reliance on state and  
15 local weights and measures officials and other enforcement  
16 agencies, not whether they have sufficient number of personnel.

17 THE COURT: You may answer it.

18 THE WITNESS: It is certainly true that we have plenty  
19 of work to do and we could use many more employees. There is  
20 no doubt about it. But we feel -- however, don't let the small  
21 numbers influence you because, again, we do use many other  
22 agencies, many other people to get our job done and it may go  
23 to Fish & Game people. It may go to State Weights & Measures.  
24 It may go to many people, so, just because we have a small  
25 number of people does not mean we can't get the job done.

26 Q BY MR. DUNLAVEY: Somehow or other, I gather, last  
27 year you got 8,000,000 pounds of meat products remedied some-  
28 how or other?

1 A That is correct.

2 Q And, to the best of your knowledge, there wasn't  
3 one pound of Rath meat in it?

4 A To my knowledge, yes.

5 MR. DUNLAVEY: No other questions, your Honor.

6  
7 REDIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Do you ever ask Weights & Measures officials to  
10 order meat products off sale?

11 A I don't think order is a proper word. We work in  
12 conjunction with other compliance staffs within other states  
13 and we do advise them at times what our opinion would be and  
14 what our action would be under similar circumstances.

15 Q Do you request they order products off sale?

16 A We do have the delegation to state agencies to  
17 remove products and we have done this, yes.

18 Q Do you ever ask state officials -- state or  
19 county -- State of California Weights & Measures officials to  
20 inspect meat at the retail level for weight?

21 A To my knowledge, we haven't done that at this  
22 point.

23 MR. GRAHAM: Thank you.

24 THE COURT: Fine. Thank you, Mr. Hutchings.

25 MR. GRAHAM: I would like to call to the stand Mr.  
26 Becker please.  
27  
28

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 74-1051  
No. 73-3583

GENERAL MILLS, INC., a corporation; THE PILLSBURY COMPANY,  
a corporation; SEABOARD ALLIED MILLING CORPORATION, a  
corporation,

Appellants,

v.

JOSEPH W. JONES, as Director of the County of Riverside  
Department of Weight and Measures,

Appellee.

Appeal From The United States District Court  
For The Central District Of California

BRIEF OF THE UNITED STATES AS AMICUS CURIAE

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ISSUE PRESENTED

Whether 21 CFR 1.8b(q) is valid.

STATEMENT OF THE CASE

This case is as an action for declaratory relief by General Mills, Pills-  
bury, and Seaboard Allied Milling, three wheat flour manufacturers, against  
the director of the California County of Riverside Department of Weights and  
Measures. The action was precipitated when the county, acting under a  
state statutory procedure, ordered "off sale" flour packages it determined  
to be unlawfully underweight. The milling companies sought a declaratory



judgment that the imposition of the state weight law on their products was unlawful and an injunction restraining the county officials from enforcing the state law against their products. Although the millers attacked the county's actions on numerous grounds, the court properly perceived that the only genuine issue was an apparent conflict between state and Federal law.

The pertinent Federal statute is 21 U.S.C. 343, which states:

A food shall be deemed to be misbranded -

\*\*\*

(e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

\*\*\*

Pursuant to the proviso in that statute, the following regulation, 21 CFR 1.8b(q), was issued to describe the "reasonable variations" mentioned in the proviso:

The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

California has a more complicated statutory scheme for regulating the labeling of packages as to the weight of their contents. Section 26551 of the Health and Safety Code is essentially identical to 21 U.S.C. 343(e).

In addition to that requirement, however, section 12607 of the Business and Professions Code requires that the net weight appear on the package; no mention of variations is made. Section 12211 of the Business and Professions Code, which establishes the authority to order products off sale, declares that the "average weight" of packages must equal the stated weight, thus by implication permitting certain variations.

The apparent Federal-State conflict, then, is in the type of variations permitted. While the Federal regulation recognizes variations arising from two sources, California's average-weight provision is equivalent only to the federal recognition of "unavoidable deviations in good manufacturing practice." The other type of variation recognized in the Federal regulation, loss or gain of moisture, has no counterpart in the California statutes. Since flour gains or loses moisture depending on its conditions of storage, and the flour ordered off sale preceding this case was apparently less than stated weight because of moisture loss, the question arises as to which standards govern.

The district court in this case, while holding that Federal standards governed, ruled that Federal standards did not allow variations from stated weight. It reached that conclusion by stating that the case was governed by the principles it announced in Rath Packing Co. v. Becker, 357 F. Supp. 529 (C.D. Cal., 1973), and consequently, that 21 CFR 1.8b(q) was invalid for its failure to define "reasonable variations" with sufficient explicitness. The court further held that in the absence of a valid regulation, the absolute requirement for accurate labeling in 21 U.S.C. 343(e)(2) was the only law applicable. It therefore found the state statutes inconsistent and enjoined their enforcement against products also subject to the Federal Food, Drug, and Cosmetic Act.

Thus, the result of this case is that a Federal regulation that is an important part of the labeling standards has been declared invalid for vagueness, while at the same time Federal statutory standards have been held to be the only operative law. Because California has read the court's opinion as requiring labeling of minimum weight, rather than the accurate weight Federal law requires, the confusion of this situation has been compounded, leaving the law of weight labeling in California in complete disarray. It is important to clarify what the Federal law is if this important regulatory program is to be continued.

ARGUMENT

I. THE REGULATION IS ENTIRELY  
CONSISTENT WITH THE STATUTE  
AND IS THEREFORE VALID.

The regulation in this case is not challenged as unconstitutional. Thus, it is invalid only if it is unreasonable or inconsistent with the statute authorizing it to be issued. See, e.g., Commissioner v. South Texas Lumber Co., 333 U.S. 496, 501 (1948); United States v. Morehead, 243 U.S. 607, 614 (1917); Review Committee v. Willey, 275 F.2d 264, 272 (C.A. 8, 1960); United States v. Obermeier, 186 F.2d 243, 247 (C.A. 2, 1950).

A. The Statute Requires Only  
That the Regulation Be a  
Statement of Enforcement  
Policy

The statutory provision in question, 21 U.S.C. 343(e), had its origin in a 1913 amendment to the 1906 Federal Food and Drugs Act (34 Stat. 768). Section 8 of the original Act required that any labeling statement as to weight be correct, but there was no requirement that a statement of the

weight of the contents be made. In 1913 Congress remedied this deficiency by requiring a statement of weight, and through a proviso, sought also to take account of industrial practicalities (37 Stat. 732). As the committees of Congress saw the amendment,

Under the terms of the bill reasonable variations are permitted, whether tolerances are or are not established by the rules and regulations, nor will the tolerances established by the rules and regulations be conclusive upon the courts in determining the question of the reasonableness of the variations, but the establishment of tolerances by rules and regulations will undoubtedly be a great aid to the producers of food products in package form by letting them know in advance what the Government officials believe to be reasonable variations. The establishment of tolerances will also be a great aid to the officials both of the General Government and to the law. S. Rep. No. 1216, 62nd Cong., 3d Sess. (1913) at 3; H.R. Rep. No. 850, 62nd Cong., 2d Sess. (1912) at 3.

In United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932), the Supreme Court ruled, however, that the committees' intentions had not been successfully carried out by the language of the statute. In answer to the argument that the statute was void because it substantively prohibited unreasonable variations, the Court held that the reference to variations was not part of the offense described:

The substantive requirement is that the quantity of the contents shall be plainly and conspicuously marked in terms of weight, etc. We construe the proviso simply as giving administrative authority to the Secretaries of the Treasury, Agriculture, Commerce, and Labor to make rules and regulations permitting reasonable variations from the hard and fast rule of the act and establishing tolerances and exemptions as to small packages ...



...  
The effect of the provision assailed is to define an offense, but with directions to those charged with the administration of the act to make supplementary rules and regulations allowing reasonable variations, tolerances, and exemptions, which, because of their variety and need of detailed statement, it was impracticable for Congress to prescribe. The effect of the proviso is evident and legitimate, namely, to prevent the embarrassment and hardship which might result from a too literal and minute enforcement of the act, without at the same time offending against its purposes.

On July 12, 1933, only seven months after the Shreveport decision, a bill was introduced in Congress to revise the Food and Drugs Act completely, but the requirement pertaining to labeling of contents was proposed to be re-enacted in substantially the same form as in the 1913 amendment. (See C. Dunn, Federal Food, Drug, and Cosmetic Act 29, 39 (1938).) Through the following five years of legislative hearings and revisions, during which time the bill was extensively debated and studied, the language of the weight-labeling requirement remained unchanged until it was enacted in 1938 (52 Stat. 1040). The reason for relatively little change from the 1913 amendment was the intention to carry over the same law. W. A. Campbell, Chief of the Food and Drugs Administration, testified before the Senate Commerce Committee that the proposed revision was "the language of the law at the present time." Hearings on S.2800, 73d Cong., 2d Sess. (1934) in C. Dunn, supra, at 1166. The committee report subsequently noted that the labeling requirement in the bill "merely repeats the provisions of the present law." S.Rep.No. 361, 74th Cong., 1st Sess. (1935) in C. Dunn, supra, at 245.

When Congress reenacts a statute in substantially the same form, it is

presumed to have adopted any prior judicial construction of the language. See, e.g., Shapiro v. United States, 335 U.S. 1, 16 (1948); Dragor Shipping Corp. v. Union Tank Car Co., 371 F. 2d 722, 726 (C.A. 9, 1967). Here the substantial similarity between the 1913 and 1938 enactments, as well as the expressions in the legislative history that it was the intention of the drafters to carry over the existing law, causes that presumption to operate. The continuing validity of Shreveport after the 1938 Act is therefore apparent. In addition, a change in punctuation that accompanied the redrafting indicates an affirmative congressional adoption of the Shreveport interpretation. In Shreveport the Court noted that there would be no doubt that its conclusion was correct if there were a comma after the word "established" in the proviso. 287 U.S. at 82. The bill introduced in Congress seven months later had a comma inserted at that point (see C. Dunn, supra, 38), and the bill became law in that form.

As interpreted by the Shreveport Court, 21 U.S.C. 343(e) and the regulation issued pursuant to it have a special status, which the lower court failed to consider in this case. The substantive requirement is that package labels accurately state the weight of the contents. There is no exception for variations, even if reasonable or unavoidable. There is no exception for overfilling; the statute requires an accurate statement of the contents, not a statement of its minimum contents. Under Shreveport, the proviso and regulations operate to mitigate this hard-and-fast rule. The mitigation takes place not by modifying the requirement for accurate labeling, but by exempting from enforcement those violations which the Secretary deems to be reasonable violations. As the Shreveport Court read the statute, the proviso is a direction to the Secretary formally to announce his in-

tention not to enforce the statute against reasonable variations from stated contents. The regulation constitutes a reassurance to the industry that unavoidable violations will be tolerated and a direction to Government enforcement officers that they should consider the reasonableness of the error in proceeding against violators.

The regulation, therefore, does not govern or affect primary conduct. The court's statement in Rath that the regulation is void "for its inadequacy to set any recognizable standard upon which any individual may measure his conduct or his compliance with the law by which he must order his personal or business life" (357 F.Supp. at 534) misses the point. Shreveport makes clear that the proviso and regulation do not affect the legislative command to the industry. Packagers are to label their products accurately -- not higher, not lower. The proviso and regulation together constitute a formalized prosecutorial discretion or a policy of exercising a power of dispensation. See 1 K. Davis, Administrative Law Treatise, §2.02 n.16 (1958); Note, "The Power of Dispensation in Administrative Law - A Critical Survey," 87 U. Pa. L. Rev. 201 (1938). The regulation is not directed at the conduct of private parties, but at the internal operations of the Food and Drug Administration.

As a statement of policy on the appropriate times for enforcement of the accurate-labeling requirement, 21 C.F.R. 1.8b(q) is not subject to being voided for vagueness. It is well-settled that prosecutorial discretion is an executive matter not subject to judicial review unless an unjustifiable standard is used to discriminate among persons. See, e.g., Oyle v. Boles, 368 U.S. 448 (1962); Newman v. United States 382 F.2d 479 (C.A. D.C., 1967).

Since this regulation is in essence a statement of prosecutorial policy, the same law applies. As the standard here is based on considerations of technical capabilities and not on factors personal to potential defendants, the regulation is not subject to judicial review. The Food and Drug Administration can and will continue to observe the congressional mandate by not enforcing the law against unavoidable violations, and the lower court's ruling thwarting the statutory attempt to have the policy formally on the record should not be sustained.

B. The Agency's Interpretation of the Statute As Requiring Only the Regulation Issued Supports the Validity of the Regulation

It is well established that the interpretation given a statute by the agency charged with its administration is to be followed unless it is clearly wrong. See, e.g., Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969); Stevens v. Commissioner of Internal Revenue, 452 F.2d 741, 746 (C.A. 9, 1971). The regulation issued after the 1913 amendment did not establish percentage or other quantitative tolerances, but instead, like the present regulation, enumerated the permissible sources of variation. The pertinent part of the regulation, issued May 11, 1914, was as follows:

- (i) The following tolerances and variations from the quantity of the contents marked on the package shall be allowed:
  - (1) Discrepancies due exclusively to errors in weighing, measuring, or counting, which occur in packing conducted in compliance with good commercial practice.
  - (2) Discrepancies due exclusively to differences in the capacity of bottles and similar containers, resulting solely from unavoidable difficulties in manufacturing such bottles or containers so as to be of uniform



capacity; Provided, That no greater tolerance shall be allowed in case of bottles or similar containers which, because of their design, can not be made of approximate uniform capacity than is allowed in case of bottles or similar containers which can be manufactured so as to be of approximate uniform capacity.

(3) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

Discrepancies under classes (1) and (2) of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case. (U.S. Dep't of Agriculture, Bureau of Chemistry, Service and Regulatory Announcements (May 22, 1914) at 203; subsequently modified slightly and reprinted as modified in C. Dunn, 1 Dunn's Food and Drug Laws 15-16 (1927).)

The agency's contemporaneous and now longstanding interpretation of the statute as requiring only description of the sources of the variations must be accepted in the absence of conclusive evidence of its error.

C. Congressional Reenactment of the Statute Supports the Validity of The Regulation

Moreover, it is an equally well-established rule of construction that a longstanding administrative interpretation of a statutory provision that is reenacted in substantially the same form is deemed to have received congressional approval and has the effect of law. See, e.g., Commissioner v. Estate of Noel, 380 U.S. 678, 682 (1965); NLRB v. Brooks, 204 F.2d 899, 905 (C.A. 9, 1953), aff'd 348 U.S. 96 (1954).

The 1913 enactment amended the statute to read as follows:

Sec: 8 ... That for the purposes of this Act an article shall also be deemed to be misbranded...

In the case of food: ...

Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, that reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section three of this Act.

In 1938 Congress rewrote the Act, but retained substantially identical language for this provision. Under accepted rules of construction, this reenactment constituted a congressional adoption of the agency's long-held position that its regulations on this subject need only describe the permissible variations in general, qualitative terms. The reenactment refutes the contention of the lower court in this case that the Secretary has failed to carry out the statutory mandate. On the contrary, the action of Congress in 1938 was approval of the regulations and is inconsistent with the lower court's ruling now that the statutory intent can be satisfied only through the promulgation of explicit, quantitative tolerances.

II. THE REGULATION CLARIFIES THE IMPORTANT FEDERAL POLICY OF ACCURATE LABELING AND SHOULD THEREFORE BE UPHOLD.

Neither the opinion in Rath nor the opinion in this case gives any indication what the court thought to be the difference in the Federal law of labeling once 21 CFR 1.8b(q) was declared void and enforcement officers were "left with the absolute standard of the statute." (Op., p. 3). The implication of this language is that Federal law has somehow been changed by voiding the regulation. The teaching of Shreveport could not be more clear, however, that all the substantive labeling law is contained in the statute

and none in the regulation. In response to the court's order, California has changed its regulation (Cal. Adm. Code, Title 4, Chapter 8, Subchapter 2.1) and now orders off-sale all packages that are less than the weight stated on the label. In short, California has read the lower court's opinion as declaring 21 U.S.C. 343(e) to require labeling of minimum weight in the absence of a regulation permitting variations. If California has correctly interpreted the court's opinion, the court has greatly altered the legislative scheme, and its decision cannot be reconciled with the statute. Thus, an important consideration favoring the validity of 21 CFR 1.8b(q) is its utility in clarifying Federal law.

A. Federal Law Requires a Label To  
State the Package's Accurate -  
Not Its Minimum Weight

The minimum-weight labeling scheme which California has adopted in response to the lower court's opinion in this case might be regarded by some as having advantages. As a regime oriented to the individual purchase, it would assure that each purchaser receives at least as much value as he thought he was getting. It is, however, not the system Congress chose for this country. Instead, 21 U.S.C. 343(e) commands that the weight stated be "accurate," not underweight and not overweight.

Other than to offer the purchaser the ability to know if his particular needs will be satisfied by the quantity he is buying, the main purpose for weight labeling is to aid in the determination of cost. Only by knowing both the price and the weight of the package can a purchaser derive accurate information on the cost of the product, and only when the same information is known about competitive products can accurate comparisons be made. A minimum weight labeling system does not allow the purchaser to make an

accurate computation of cost. In a minimum-weight system, where all packages must be above the stated weight, there will still be variations in package weights caused by the unavoidable deficiencies of the filling machinery. But instead of these variations clustering near the stated weight, they will cluster around some unknown weight above the stated weight. The price of packages will, of course, be set in consideration of their average actual weight, not their stated weight. Consequently, the purchaser, who cannot determine the amount of overfill, and therefore cannot determine the weight on which the price is based, is less able to calculate the true cost of the product. Moreover, in making comparisons between products, there is no way of a purchaser's knowing whether different manufacturers have selected the same percentage of overfill. The choice is thus between knowing the least possible value of a package or knowing the actual value of an average package. The latter choice would seem to be much more useful to consumers over time and is the result of the accurate-weight system adopted by Congress. In any event, Congress has spoken, and its choice in favor of accurate weight must be observed.

Similar reasoning to that permitting reasonable variations due to filling machinery errors underlies the policy permitting some variation from stated weight for gain or loss of moisture. Any kind of measurement is meaningful only when the conditions under which the measurement is made are understood. The length of metal bars, for example, varies with the temperature, and the weight of a given volume of gas depends on the pressure it is under. Similarly, with food a common problem is the amount of moisture it contains. A package of flour that is five percent heavier than another is not worth any more if the additional weight is just water. Consequently, the moisture



content of a package of flour must be known before its value can be understood or compared with other packages of flour.

The problem of labeling packages when unavoidable gain or loss of moisture occurs after a package of flour leaves the manufacturer cannot be easily solved. The statute requires "accurate" labeling, but the inevitable gain or loss of moisture is unpredictable, and compliance with the terms of the statute is therefore extremely difficult. Moreover, even if moisture changes for a particular lot of flour could be estimated and the packages overfilled or underfilled accordingly, thereby complying with the letter of the statute, value comparisons would be distorted unless all lots of flour to be sold in competition with it had been overfilled or underfilled to the same extent. One package, for example, might be overfilled more than another in anticipation of longer transportation or storage times or of intermediate storage under especially dry conditions. Although both packages might have the same actual weight by the time a consumer buys them, the originally-heavier package would in fact be more valuable. Loss of water might have equalized the weights, but the originally-heavier package would have started with more flour solids, and it would still have more. Looking only at the prices and the stated weights, the consumer would have no idea which package was more valuable. Ironically, in the case of flour, strict adherence to the letter of the statute produces a useless result that is wholly inconsistent with the intent of the statute.

There is no perfect solution available to accomodate the difficulties of natural phenomena to the congressional mandate for labeling of accurate weight and to the need to provide consumers with useful information. The Food and Drug Administration has, however, developed a complete regulatory

scheme for flour, which goes a long way toward that end, but which was ignored by the lower court in this case. Under present regulations, the maximum moisture content of flour is fixed by 21 CFR 15.1(a) at 15 percent at the time it is packaged, and the package is accurately labeled as to its weight at that time. If there is subsequent gain or loss of moisture, that change does not affect the value of the product. If a package has lost five percent of its weight because of moisture loss, the package is nevertheless still equivalent to the stated weight at the Government-specified moisture level. Only the valueless water has disappeared; the nutrient solids are still entirely present. 21 CFR 15.1(a) combines with 21 CFR 1.8b(q) to create a workable elaboration of the labeling statute, one that seeks to effect the intent of the legislation. In the case of packaging and labeling flour, an unthinking insistence on accurate labeling of weight at the time of retail sale does not necessarily best serve the needs of consumers. If moisture content is not considered, the stated weight may be extremely deceptive. The present regulation carries out the statute's purpose and should be upheld.

B. State Enforcement Must Be  
Consistent With Federal Policy  
On Accurate-Weight Labeling.

The lower court in this case properly recognized that Federal standards preempt state law in regard to labeling requirements. (Op., p.2). The test for Federal preemption is whether the state regulation can be enforced without "impairing the federal superintendence of the field .... A holding of federal exclusion of state law is inescapable ... where compliance with both federal and state regulations is a physical

impossibility for one engaged in interstate commerce...." Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143 (1963). As it is impossible for a package to be labeled accurately in accordance with Federal weight-labeling standards and at the same time to be labeled in accordance with a different minimum-weight state standard, Federal law governs. The pertinent Federal statute, 21 U.S.C. 343(e), deliberately sets the rarely achievable standard of accuracy and depends on enforcement discretion to carry out its fair administration. No package will ever have so accurate a label that sensitive measuring equipment cannot detect a discrepancy. Enforcement policy thus is crucial to achievement of the substantive requirements: since most packages will vary from the stated weight, the enforcement policy cannot be arbitrary, but must encourage labeling as close to accuracy as possible.

It is well-settled that the supremacy clause (U.S. Const. Art. VI) requires state programs to respect Federal policy as well as the letter of Federal statutes. See, e.g., Nash v. Florida Industrial Commission, 389 U.S. 235 (1967); Farmers Educational and Cooperative Union v. WDAY, Inc., 360 U.S. 525, 535 (1959). To avoid inconsistency with Federal law and policy, state enforcement policy must therefore support the Federal requirement of accurate labeling. A state policy of prosecuting short-weight packages, no matter how little the actual weight is less than the stated weight, would be inconsistent with Federal law and policy and would be barred by the supremacy clause. Such a policy would compel manufacturers to overfill packages in order to avoid sanctions for unavoidable variations, and a tendency away from accurate labeling would thereby be encouraged. State enforcement policy must therefore recognize unavoidable variations

if it is to be consistent with the Federal statutory requirement of accurate labeling. In short, the policy embodied in 21 CFR 1.8b(q) must be recognized in state law whether or not the Federal regulation exists. Its existence clarifies that requirement and avoids a misinterpretation of the kind California has made in its recently promulgated regulation. The validity of the Federal regulation should therefore be upheld, as it is a description of the policy that state, as well as Federal, enforcement must apply to fulfill the intent of the statute.

### III. THE REGULATION IS EXPLICIT AND NOT VAGUE.

#### A. The Instruction to Packagers is Clear.

The regulation's definition of permissible variations is sufficiently explicit to give clear guidance to manufacturers. Other than variations related to moisture, variations are tolerated only when they arise from "unavoidable deviations in good manufacturing practice." The language allows no choice of conduct to packagers; variations are permitted only when they are "unavoidable." The reference to "good manufacturing practice" indicates that packagers are permitted to use ordinary commercial equipment and need not use scientific apparatus, but other than that there are no alternatives that might make a manufacturer uncertain of his obligation. "Unavoidable" is an explicit term and creates no doubt.

The provision for variations caused by gain or loss of moisture during the course of good distribution practice is equally explicit. The requirement for "good distribution practice" is parallel to the requirement for good manufacturing practice and indicates the necessity only for ordinary commercial methods. Once such methods are followed, the only



moisture changes tolerated are those unavoidable changes owing to natural phenomena. In effect, the requirement on moisture also permits only unavoidable variations and leaves no doubt to the manufacturer of his obligations under the law.

B. The Instruction to Enforcement  
Officers Is Clear.

The lower court worries that "each enforcement officer is left to his own personal standard of what is reasonable" and that this possibility makes the regulation impermissibly vague. (Op. p.3.) Although the possibility that individual officers might interpret a regulation differently has not previously been thought to constitute vagueness, even under this standard the regulation is sufficiently explicit. The moisture content of a sample of flour can be determined by routine laboratory methods, and since the weight of water is known, it can be easily calculated whether the sampled product has as much solids content as would a package of flour of the stated weight containing the permissible percentage of moisture under the Federal standard, 21 CFR 15.1(a). If it does, it is a reasonable variation; if it does not, enforcement action should be taken. The administration of this part of the regulation is entirely technical, and there is no opportunity for an officer's judgment on what is reasonable.

In respect to variations arising from the packaging process, the officer must exercise some judgment, but not on the question of what variation is "reasonable." Instead, the judgment is made as to what deviations are "unavoidable." That judgment requires an understanding of the capabilities of commercial packaging machinery, and the only source of difference in judgment among enforcement officers would be a difference of opinion on what

their capabilities were. That possibility is hardly the unbridled discretion that the lower court asserts exists under the regulation.

CONCLUSION

Certain variations from stated weight must be recognized if the Federal statutory policy of accurate-weight labeling is to be carried out. The only inconsistency between California law and Federal law is California's refusal to acknowledge the Federal policy in favor of allowing certain variations caused by gain or loss of moisture where necessary to effect the intent of 21 U.S.C. 343(e). Initially, this court should make clear that 21 CFR 1.8b(q) is a valid expression of Federal policy. In addition, the case should be remanded to the district court with directions to modify its injunction so as to prohibit application of state off-sale procedures against products in compliance with Federal labeling standards as elaborated by 21 CFR 1.8b(q).

Respectfully submitted.

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# CHECKING PREPACKAGED COMMODITIES

## A Manual for Weights and Measures Officials

Malcolm W. Jensen

NATIONAL BUREAU OF STANDARDS

HANDBOOK 67



U.S. DEPARTMENT OF COMMERCE • Lewis L. Strauss, Secretary

NATIONAL BUREAU OF STANDARDS • A. V. Astin, Director

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procedures in conjunction with and during the store visits made for the primary purpose of scale testing, major efforts in package checking will be most effective if they are separated from other phases of the weights and measures enforcement program. For a sustained program of package checking in a large jurisdiction, it is suggested that the very best results will be obtained if this activity is carried on by trained specialists who concentrate on this type of work.

The inspector assigned principally to mechanical inspections and only as a side line to package checking will normally execute this phase of his work in the retail stores. Occasionally even he will find it advantageous to check packages at wholesale distributors and even, in special circumstances, at the establishment of the manufacturer or packer. The specialist assigned full time to this work will find that much of his activity is carried on at the locations of the distributors and the packers in his jurisdiction. He will "run down" reports of package inaccuracies reported by other inspectors and, on his own initiative, spot-check distributors of packaged merchandise.

The primary object of the inspector in this field is to see that quantity is accurately represented to the ultimate purchaser—the consumer; nevertheless, he may be of very real service to the manufacturer, distributor, and retailer if he is able to identify the exact point at which any shortages begin to appear.

Certain packaged products distributed through the normal packer-to-distributor-to-retailer channel are subject to gain or loss of weight through the increase or decrease in moisture content, beginning immediately after the packaging occurs.

The Model Regulation provides that "variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure \* \* \* to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure." The distribution point after which such shrinkage losses are permitted is a statutory or regulatory provision that varies among the States.

It is admitted that such indefinites as "ordinary and customary exposure" and "good distribution practice" are difficult to set forth quantitatively; thus the experience and judgment of the inspector must be relied upon. He will learn to compare various environments and various systems of distribution and storage. As the result of his experience he will be able to develop procedures for conducting a sound investigation that will result in the building up of a working knowledge as to what is "customary exposure" and what may be con-



sidered to be "good distribution practice" with respect to the packages of an individual commodity that may gain or lose weight through gain or loss of moisture.

To be truly adequate, a package-checking program must be extensive with respect to the relative time spent, and diversified with respect to the types of packages checked. General coverage of the packages offered for sale in the jurisdiction is the key to adequacy and appropriateness. A program should not be directed to a single type of package, such as fresh meats in self-service markets, or even to a few types. Packages distributed through interstate commerce, canned peas and bottled vinegar, for example, should receive a proportionate share of attention.

Although a weights and measures administrator will direct concentration on specific items for special surveys or to correct quickly faults that have been discovered, he will plan the general program so as to "sample" all areas of commodities sold in packages.

### 3. CLASSES OF PREPACKAGED COMMODITIES

There are two distinct classes of prepackaged commodities—"random" packages, representing packages of a single commodity in a variety of random sizes which in most cases are put up in the retail store, and "standard-pack" packages, representing packages of a single commodity put up in selected sizes. Within the standard-pack class there are two categories, those packages sold by weight and those sold by liquid measure. Although in certain respects the operations in regard to "random" and "standard-pack" packages differ, the equipment used for the checking and the approach to the checking activity are similar in each case.

### 4. EQUIPMENT

In the belief that the testing equipment used by a weights and measures official should be, insofar as practicable, "standard" equipment designed especially for and restricted to official use and tested regularly and completely controlled by the official, the procedures described here will, for the most part, involve the use of special equal-arm package-reweighing scales and standard test weights. It is recommended that the first such scale required for this work be one of nominal 3-pound (actual, with careful use, 10-

of the packaging material, and then place on the load-receiving element of the scale standard weights in an amount equal to the tare weight plus the labeled weight. Note the exact indication of the scale (either automatically indicated or indicated by poise placement—with or without counterpoise weights—as the case may be). Remove these standard weights from the load-receiving element and place thereon a package to be weighed. Restore precisely the previously noted scale indication by adding or removing standard weights. The weights thus added or removed indicate the package error—*short* (minus) if weights are *added*, *over* (plus) if weights are *removed*.

Because some shortages in package weight are caused by the leaking of fluids from the commodity, and because certain packages are sufficiently watertight that they will hold such leaked fluid, it will be advisable to make special observation in certain instances. If a package containing a commodity suspected of leaking is transparent, and if any tray, cup, or other absorbent packaging material apparently has not absorbed any moisture, the package may be turned upside down so that any fluid will run to the transparent top and be easily seen. If fluid is apparent inside the package, or if the packaging material appears to be or to have been wet and soggy, the package should be opened and the net weight determined directly.

**Step 2. Recording** (see also Section 11).—Record the labeled weight and the error in  $\frac{1}{16}$  ounce for each small package, or in an appropriate denomination for each large package. The zero errors (recorded as 0) and the plus errors are listed in one column, the minus errors in a second column. (See example, Step 5.)

**Step 3. Unreasonable errors.**—Circle errors that are "unreasonably" large, either plus or minus. The decision as to the unreasonableness of an error, though of necessity arbitrary, must be made and may be predicated, to a certain extent, on knowledge. Consideration should be given to (1) the allowable error in the commercial device employed in the packaging process, (2) the possible error in the scale used to check the packages, (3) anticipated reasonable human errors in both operations, and (4) the susceptibility of the packaged commodity to accurate weight control at the time of packaging. The table that follows is suggested for both random and standard-pack packages that contain items of such a nature that they are susceptible of precise weight control. Standard-pack packages of such commodities as apples, potatoes, and the like cannot be controlled as pre-

cisely as can packages of commodities such as peas, corn, sugar, salt, and flour; consequently the inspector must exercise greater liberality in the determination of the reasonableness or unreasonableness of errors in packages containing large individual elements.

(It will be noted that the suggested plus allowances are twice the suggested minus allowances at each "labeled quantity." This is an acknowledgment that packers must be allowed to overfill such packages as are susceptible of moisture loss.)

#### UNREASONABLE MINUS OR PLUS ERRORS

Labeled quantity	Minus error Greater than	Plus error Greater than
0 to 2 ounces.....	$\frac{1}{8}$ ounce.....	$\frac{1}{4}$ ounce.
2+ to 8 ounces.....	$\frac{1}{4}$ ounce.....	$\frac{3}{8}$ ounce.
8 ounces+ to 2 pounds.....	$\frac{1}{2}$ ounce.....	$\frac{1}{2}$ ounce.
2+ to 4 pounds.....	$\frac{1}{4}$ ounce.....	$\frac{1}{2}$ ounce.
4+ to 7 pounds.....	$\frac{1}{2}$ ounce.....	$\frac{3}{4}$ ounce.
7+ to 14 pounds.....	$\frac{1}{2}$ ounce.....	1 ounce.
14+ to 24 pounds.....	$\frac{3}{4}$ ounce.....	1 $\frac{1}{2}$ ounces.
24+ to 36 pounds.....	1 ounce.....	2 ounces.
36+ to 51 pounds.....	8 ounces.....	1 pound.
51+ to 101 pounds.....	2 pounds.....	4 pounds.

The figures offered above are suggested for the determination of the "reasonableness" of errors in individual packages; they should not be used as tolerance figures.

**Step 4. Action based on unreasonable errors.**—Action should be taken with respect to the packages with unreasonable errors (either + or -); the following is suggested:

(a) If one package of the sample of 10 packages has an unreasonably large *minus* error, that package may be ordered repacked or relabeled, or may be held to constitute a violation of the statute and taken as evidence, at the discretion of the inspector.

(b) If there are in the sample of 10 packages 2 or more packages with unreasonably large *minus* errors, the *entire lot* should be held in violation, *without further calculation*. Appropriate action with respect to ordering off sale, prosecution, or the like should be taken. (See 10. Official Action.)

(c) If 3 or less of the sample of 10 packages have unreasonably large *plus* errors, these should be called to the attention of the market operator or the person responsible.

(d) If there are in the sample of 10 packages 4 or more packages with unreasonably large *plus* errors, this should be considered to show poor packaging practice, without further calculation. This situation should be called to the attention of the store operator, who should be instructed as to more precise weighing.

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#### Affidavit of Malcolm W. Jensen

(Filed December 19, 1973)

STATE OF NEW JERSEY)

ss:

COUNTY OF ESSEX )

MALCOLM W. JENSEN, being duly sworn, deposes and says:

1. At the present time I am and since April 1973 have been president of the Can Manufacturers Institute, a trade association with offices at 1625 Massachusetts Avenue, N.W., Washington, D.C. Prior to April of this year I was for many years employed by the United States Government. From July 1951 to July 1960 I was Assistant Chief of the Office of Weights and Measures, National Bureau of Standards in the United States Department of Commerce. In July 1960 I became Chief of that office and served in that capacity until April 1966, when I became Manager of Engineering Standards which included the Office of Weights and Measures. From April 1969 to December 1970 I was first, Deputy Director and later Director of the Institute of Applied Technology, National Bureau of Standards in the United States Department of Commerce, which had jurisdiction over some ten technical divisions, including the Office of Weights and Measures. From December 1970 to March 1971, I was Deputy Director of the Bureau of Domestic Commerce and from March 1971 to April 1973, when I retired from the government service, I was Director of the Bureau of Product Safety—Food and Drug Administration—in the United States Department of Health, Education and Welfare. Prior to my employment by the United States Government I was the Sealer of Weights and Measures of the City of Madison, Wisconsin, and also taught mathematics at the



University of Wisconsin. As the result of my said employment and experience I have extensive and detailed personal knowledge of the matters hereinafter stated.

2. During the period when I served as Assistant Chief of the Office of Weights and Measures in the National Bureau of Standards I prepared and wrote the Handbook entitled "CHECKING PREPACKAGED COMMODITIES, a Manual for Weights and Measures Officials," which was issued on March 20, 1959 by the National Bureau of Standards as "Handbook 67." The information and procedures set forth in the said Handbook are based upon my own extensive experience in dealing with the control of prepackaged commodities and upon information which I assembled in my capacity as Assistant Chief of the Office of Weights and Measures.

3. I have been requested by counsel for plaintiffs in this action to state the source of the table of figures which appears in Section 8.1, at page 8 of Handbook 67, under the heading, "UNREASONABLE MINUS OR PLUS ERRORS," and whether those figures have any relationship to variations, after packaging, in the weight of a hygroscopic commodity such as flour caused by changes in the relative humidity to which the package is exposed.

4. The said table of "Errors" was based solely upon information which was collected by me or under my supervision with respect to errors in the weight of packaged commodities which resulted from "deviations" at the time of packaging either because of the nature of the commodity or the limitations of the packaging machinery or of humans involved in the packaging or check-weighing operation. The said figures have nothing whatsoever to do with "variations" in the weight of hygroscopic commodities which occur, after the packing process is completed, as the result of a gain or loss of moisture caused

by changes in the relative humidity to which the commodity is exposed.

5. A thoughtful reading of the paragraph in which the table appears, together with a reading of Section 2 of Handbook 67, will clearly demonstrate the accuracy of the foregoing statement. I refer particularly to the language of the last three paragraphs at page 2 of Handbook 67 which expressly advises the inspector how to deal with problems resulting from "gain or loss of weight through the increase or decrease of moisture content beginning immediately after the packaging occurs." The following language at that point is particularly significant:

"Certain packaged products distributed through the normal packer-to-distributor-to-retailer channel are subject to gain or loss of weight through the increase or decrease of moisture content, beginning immediately after the packaging occurs.

The Model Regulation provides that 'variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure . . . to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure.' The distribution point after which such shrinkage losses are permitted is a statutory or regulatory provision that varies among the States.

It is admitted that such indefinites as 'ordinary and customary exposure' and 'good distribution practice' are difficult to set forth quantitatively; thus the experience and judgment of the inspector must be relied upon. He will learn to compare various environments and various systems of distribution and storage. As the result of his experience he will be

able to develop procedures for conducting a sound investigation that will result in the building up of a working knowledge as to what is 'customary exposure' and what may be considered to be 'good distribution practice' with respect to the packages of an individual commodity that may gain or lose weight through gain or loss of moisture."

6. By contrast, Step 3 under Section 8 of Handbook 67 deals with the problem of handling deviations which occur in the packing process and admonishes the weight inspector as follows:

"Consideration should be given to (1) the allowable error in the commercial device employed in the packaging process, (2) the possible error in the scale used to check the packages, (3) anticipated reasonable human errors in both operations, and (4) the susceptibility of the packaged commodity to accurate weight control at the time of packaging. The table that follows is suggested for both random and standard-pack packages that contain items of such a nature that they are susceptible of precise weight control. Standard-pack packages of such commodities as apples, potatoes, and the like cannot be controlled as precisely as can packages of commodities such as peas, corn, sugar, salt, and flour; consequently the inspector must exercise greater liberality in the determination of the reasonableness or unreasonableness of errors in packages containing large individual elements."

It is significant that the commodities referred to at that point in Handbook 67 are listed in a sequence of diminishing size, thus potatoes are smaller than apples, peas are smaller than potatoes, corn is smaller than peas, grains of sugar are smaller than kernels of corn, salt is finer than sugar, and flour is finer than salt. The point is that it is

more difficult to package precisely predetermined weights of large units of food than it is to package precise weights of smaller units of food and that the inspector should be aware of that fact when he gives consideration to "(4) the susceptibility of the package commodity to accurate weight control at the time of packaging."

7. On the basis of my personal knowledge and experience, it would be inappropriate to use the table of "Errors" which appears at page 8 of Handbook 67 as a guide to the "reasonableness" of variations in the weight of a hygroscopic commodity caused by changes in its moisture content as the result of exposure to changing relative humidity. I know, for instance, that a five-pound package of flour could lose as much as 8% of its original packaged weight when exposed to the relative humidities of less than 20% which normally and frequently occur during the winter in the northeastern part of the United States in a normally heated retail grocery store. As applied to a five-pound bag of flour, the resulting 8% loss in that situation would amount to more than six ounces; whereas the table of "Errors" in Handbook 67 would suggest that a loss greater than three-eighths of an ounce would be unreasonable.

8. I have read the "Affidavit in Opposition" filed in this cause and sworn by Miss Betty Furness on November 5, 1973 in her capacity as Commissioner of the New York City Department of Consumer Affairs. In that affidavit she states in substance that weights and measures inspectors in her department and elsewhere use the "objective federal guide lines contained in Handbook 67" to determine whether or not moisture loss in packages of hygroscopic foods is the result of "ordinary," "customary" and "unavoidable" exposure occurring in "good distribution practice." As the author of Handbook 67, I am con-



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*Affidavit of Malcolm W. Jensen.*

strained to say that such use of the so-called 'objective federal guide lines (meaning the table of "Errors" appearing at page 8 of Handbook 67) is a misuse of the Handbook and indicates a misunderstanding of the purpose and application of the so-called "guide lines."

/s/ Malcolm W. Jensen  
MALCOLM W. JENSEN

NOTARIZED

U. S. DEPARTMENT OF COMMERCE  
NATIONAL BUREAU OF STANDARDS

MODEL STATE PACKAGING AND LABELING REGULATION

1975

as adopted by

The National Conference on Weights and Measures

The National Conference on Weights and Measures is sponsored by the National Bureau of Standards in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection."

SECTION 12. VARIATIONS TO BE ALLOWED.

12. 1. Packaging Variations.

12. 1. 1. Variations from Declared Net Quantity. --Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity shall not be unreasonably large.

12. 1. 2. Variations Resulting from Exposure. --Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce: Provided, That the phrase "introduced into intrastate commerce" as used in this paragraph shall be construed to define the time and the place at which the first sale and delivery of a package is made within the state, the delivery being either

- (a) directly to the purchaser or to his agent, or
- (b) to a common carrier for shipment to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

12. 2. Magnitude of Permitted Variations. --The magnitude of variations permitted under Sections 12, 12. 1., 12. 1. 1., and 12. 1. 2. of this regulation shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.



**Petitioners,**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

**October Term, 1975**

**No. 75-1052**

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**L. T. WALLACE, as Director of Food and  
Agriculture of the State of California,  
and M. H. Becker, as Director of the  
County of Los Angeles, California,  
Department of Weights and Measures,**

**Petitioners,**

**v**

**THE RATH PACKING COMPANY, a corporation,**

**Respondent.**

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**BRIEF OF THE STATES OF MICHIGAN,  
ARKANSAS, OKLAHOMA, OREGON, TEXAS AND WEST  
VIRGINIA AS AMICI CURIAE IN SUPPORT OF  
PETITIONER L. T. WALLACE**

**JURISDICTIONAL STATEMENT**

This brief, amicus curiae, is respectfully submitted by the states of Michigan, Arkansas, Oklahoma, Oregon, Texas and West Virginia pursuant to Rule 42(4) of this Court.



The states and organizations listed in footnote 1 accept and agree with the reasons for granting the writ expressed herein.<sup>[1]</sup>

### INTEREST OF AMICI CURIAE

The People of the State of Michigan comprise more than 8,875,000 residents, as of the 1970 census. This Michigan population has purchased and consumed in 1974 some 1,331,250,000 pounds of meats.

To protect our citizens from adulterated and short weight meat products, the State of Michigan has long had a state weights and measures law. We have adopted the weights and measures statute, 1964 PA 283, as amended; MCLA 290.601, *et seq*; MSA 12.1081(1), *et seq*. This law is patterned after and is in conformity with the efforts aimed at achieving uniformity of such statutes among the several states by the National Bureau of Standards, United States Department of Commerce.

Those states, including the State of Michigan, that have adopted the model act find themselves confronted by a decision of the United States Court of Appeals for the Ninth Circuit that their statutes, promulgated at federal urging, which provide for methods of inspection for determining what is adulterated meat and whether the weight of same is accurate, are preempted by 9 CFR 317.2(h)(2).

[1]

The following jurisdictions and organizations support granting of the writ expressed in this case.

*States:* Jim Guy Tucker, Attorney General of Arkansas; Larry Derryberry, Attorney General of Oklahoma; Lee Johnson, Attorney General of Oregon; John L. Hill, Attorney General of Texas; Chauncey H. Browning, Attorney General of West Virginia.

*Organizations:* The National Conference on Weights and Measures; The Coalition for Economic Survival of Los Angeles, California; *Consumer News Letter*, Arcadia, California.

The State of Michigan and other states are concerned that unless the Court of Appeals decision is reversed the economic impact upon wholesalers and retailers, who are protected by the state weights and measures laws, will be substantial. Likewise, because of lack of enforcement of state weights and measures laws, packers and retailers would be subjected to unfair trade practices. Somewhat more remote would be the negative effect upon any incentive to develop modern packing equipment to insure against weight loss.

The States are concerned because enforcement of this decision will mean that each inspector at the local level must be familiar with what are at the moment good manufacturing and distribution practices prescribed in the federal regulations and whether the adulteration or inaccuracy of weight or contents is due to an impermissible variance from such practices. As a consequence, rather than inspecting, reweighing and re-measuring 88,879 meat packages and finding 10,537 that had to be rejected in 1974 (on a sample lot basis), the state and local inspectors would be unable to determine violations at all.

With this in mind, we are concerned that the longstanding and well-settled decision of this court in *Patapsco Guano Co v North Carolina*, 171 US 345; 18 S Ct 862; 43 L Ed 191 (1897) which held that local laws for the inspection and regulation of weights and measures are a competent exercise of the police power of the states, will be nullified.

### REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the Ninth Circuit has raised a significant problem concerning the relations between federal and state jurisdiction. The decision has ordained that a federal regulation adopted purportedly under the authority of the Federal Wholesome Meat Act can

essentially and pragmatically destroy the effectiveness of state power to insure to its citizens protection against unwholesome meats and packages of meat that are other than the quantity represented.

The Court of Appeals, in determining that Congress intended a preemption of state methods of inspection for false weights and measures of meat products, has in effect nullified traditionally valid exercises of state police power and negated the intent of Congress as expressed in 21 USC 678. It states:

Non-Federal jurisdiction of Federally regulated matters; prohibition of additional or different requirements for establishments with inspection services and as to marking, labeling, packaging, and ingredients; record-keeping and related requirements; concurrent jurisdiction over distribution for human food purposes of adulterated or misbranded and imported articles; other matters.

Requirements within the scope of the chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under

this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

In an apparent attempt to implement the Wholesome Meat Act, the Secretary of Agriculture promulgated 9 CFR 317.2(h)(2), which provides:

"The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packaging substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large."

Michigan, like many other states, has adopted a weights and measures law which is patterned after a model act developed by the National Bureau of Standards, United States Department of Commerce, pursuant to its statutory responsibility for cooperation with the states in securing uniformity in weights and measures laws and methods of inspection. See, 15 USC 272(f)(5).

An essential ingredient of that statute provides that state



enforcement officials may employ recognized sampling procedures "... under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot ...". 1964 PA 283, as amended; MCLA 290.612; MSA 12.1081(12).

To effectuate these sampling procedures, the State of Michigan has adopted the National Bureau of Standards' Handbook 67, entitled "Checking Prepackaged Commodities; a Manual for Weights and Measures Officials."

Both Handbook 67 and the Michigan provision for inspecting by sampling procedures are, according to the Court of Appeals logic, in direct conflict with 9 CFR 317.2(h)(2). This federal regulation does not permit sampling by lot, but expressly requires inspections to be performed whereby the state official must be fully aware of the vagaries of good manufacturing practices and good distribution practices for literally hundreds of meat products, some of which may have been packaged or manufactured in foreign countries. Indeed, under the federal regulations a state official cannot be expected to be knowledgeable, when he discovers a meat package that is short weight or adulterated, to know the reason for same, i.e., whether it is due to failure to conform to good manufacturing practices or good distribution practices or for some other unknown reason.

The Court of Appeals has imposed an impossible burden upon the local official to know in each and every case what was or was not a good manufacturing or distribution practice and whether the meat product is short weight or adulterated because that particular manufacturer or distributor failed to comply with such practices. Thus, this variance and conflict between one federal regulation and state law adopted at the behest of another federal executive agency will simply result in states and local communities not engaging in the inspection

of weights and measures. The Court has effectively stripped the ultimate consumer of needed and necessary protection.

Superimposed over all of this is the anomaly that the National Bureau of Standards, United States Department of Commerce, has been for several years, pursuant to the intent of Congress, cooperating with the states in securing uniformity in weights and measures laws and methods of inspection. It is therefore absurd that one agency of the executive branch advocates and assists in the adoption of uniform local laws providing for certain methods of inspection, while another agency of the executive branch, the Department of Agriculture, circumvents, frustrates, and hinders this intent by promulgating a rule which the Court of Appeals interprets to suppress and eliminate uniform local law in favor of one national law on methods of inspection.

The State of Michigan says that the Court of Appeals was in error in concluding that the Congress intended to suppress and eliminate uniformity among the several states in methods of inspection. The several states in cooperation with the National Bureau of Standards have elected to adopt a uniform law authorizing sampling methods of inspection. We assert that Congress could not have intended, by adopting section 678 of the Wholesome Meat Act, to defeat state efforts by the ill-advised adoption of 9 CFR 317.2(h)(2).

It is with these circumstances in mind and in consideration of the nature of our system of government that the principle expressed by this Court in *Florida Lime & Avocado Growers, Inc v Paul*, 373 US 132; 83 S Ct 1210; 10 L Ed 2d 248 (1963) be reemphasized. This Court said at page 142:

"The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the

absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained. \* \* \*.”  
(p 142)

A review of section 678 and of the legislative history of the Wholesome Meat Act as a whole demonstrates that there was no congressional intent to preempt the operation of state weights and measures laws insofar as they provide for a system and means of inspection and enforcement. The operative language of section 678 specifically permits the states to exercise concurrent jurisdiction with respect to inspection and take such other action consistent with the act and with respect to other matters regulated under the act.

Prohibitions upon the states from imposing “requirements” with respect to labeling or packaging, for example, are wholly different from exercising and performing the needed inspection at the shelf level to be certain the consumer is not subjected to adulterated or misbranded meat products. The Court of Appeals has actually concluded that state inspection programs utilizing the sampling methods are the imposition of a requirement, rather than an accepted procedure respecting packaging and labeling, when in fact they are not.

When an examination of the various pertinent portions of the legislative history is undertaken, one inescapable conclusion is drawn; that Congress intended that wholesome meat would be introduced into the stream of commerce — nothing less!

“This legislation has one basic and fundamental objective — to insure the wholesomeness and cleanliness of the entire meat supply in these United States. It is imperative that our meat inspection laws in this country be strong enough to guarantee that not even 1 pound of unclean

or unwholesome meat can enter into channels of human consumption.”

Representative May in the *Congressional Record*,  
10/31/67, p 30512.

“They will know that this meat, in 99 percent of the cases, will have been slaughtered under sanitary conditions and was not subject to terrible unsanitary conditions — broken-down toilets, overflowing on the floor; hair being ground up in hamburger or sausage; diseased cows slaughtered, with the diseased portion trimmed out and the remainder sent to the market unidentified as to quality, and unidentified, in more important measure, as to the lack of quality.”

Senator Monroney, *Congressional Record*,  
10/31/67, p 35358.

“A current Department of Agriculture survey of packing and processing facilities in non-Federal inspected meat plants shows the existence of appalling conditions. For example the report shows that contaminated meat, meat from diseased animals, hides, carcasses, animal entrails, flies, and other absolutely unsanitary and thoroughly disgusting items find their way into processed meats. The existence of such conditions is deplorable. The passage of legislation that will not eliminate all the unsanitary conditions and assure the public the highest quality of products is not meeting our full responsibility.”

Representative Feighnan, *Congressional Record*,  
10/31/67, p 30517.

“I want to show you what the Federal inspectors have rejected in Federal plants. First, an animal which has about a gallon of yellow pus in a joint. That animal was rejected by a Federal inspector in a Federal plant. Here



is a cow with a cancerous eye that was rejected in a Federally inspected plant. It is enough to turn your stomach. What happens in a non-federally inspected plant! Who knows! But we do know, and anybody who is honest will admit it; that the major channel of filthy meat in this country, such as it exists, goes through non-inspected plants, nonfederally inspected plants."

Representative Foley, *Congressional Record*,  
10/31/67, p 30523.

These remarks are illustrative of the congressional purpose of insuring that the United States would have an inspection system designed to insure that 100% of the meat distributed in commerce would be clean. There is no substantial evidence that Congress envisioned setting up a national standard of weights and measures or inspection at the local or shelf level of commerce which would be binding on the states. Senator Montoya, one of the Senate sponsors of the bill, stated that:

"A Federal-State relationship is maintained [by the bill] that closes the loopholes without infringing significantly upon responsibilities and agencies of the respective states."

*Congressional Record*, 10/31/67, p 35354.

This observation completely refutes the conclusion of the Court of Appeals and the position advocated by Rath, for to accept their view would result in a very significant infringement on state responsibilities in weights and measures. The federal government would be telling the states that they could no longer engage in an effective on-site retail shelf level inspection for adulterated and short weight meats.

If Congress had meant to preempt state laws, appropriate language would have been used to clearly express this objec-

tive. This they did not do, but instead, recognized that this form of enforcement and regulation is a traditional state function best left to the states with the recognition that the states are being encouraged to adopt uniform weights and measures laws.

As illustrative of Congress expressing such preemptive intent, see the Federal Tobacco Inspection Act, 7 USC 511a, *et seq*, where Congress expressly declared that "uniform standards of classification and inspection" are necessary and imperative "for the protection of producers and others engaged in commerce and the public interest therein." See *Campbell v Hussey*, 368 US 297; 82 S Ct 327; 7 L Ed 2d 299 (1961).

The regulation of the sale of foodstuffs in order to insure the health and well-being of its citizens is clearly within the traditional police power of the state. *Plumley v Massachusetts*, 155 US 461; 15 S Ct 154; 39 L Ed 223 (1899); *Florida Lime & Avocado Growers, Inc v Paul, supra*; *Cloverleaf Butter Co v Patterson*, 315 US 148; 62 S Ct 491; 82 L Ed 754 (1942). Nothing in the committee hearings, committee reports or floor debates on the Wholesome Meat Act evidences any intent on the part of Congress to preempt this traditional state power. The congressional emphasis was on cooperation, not preemption. In addition, Congress sought to modernize previous federal laws in the area of meat inspection. Part of this modernization, however, was not the preemption of state law when there had been no preemption under the old law.

It is well recognized that Congress will not preempt any state powers without debate. This legislative body contains many individuals who are always ready to do battle on behalf of state power. If the Wholesome Meat Act embodied the position taken by the Court of Appeals and Rath, those men and women in Congress would surely have made themselves

heard. Their very silence is eloquent testimony of the congressional intent.

In direct contrast, there was considerable debate concerning the provisions of Title III of the Wholesome Meat Act, which establishes the system of inspection of meat-processing facilities. Congress was clearly concerned over who should have responsibility for the inspection of intrastate meat processors. As finally enacted, the act left that responsibility with the states, provided they developed a program at least equal to that of the federal government. It is highly unlikely that Congress would be so protective of state powers in the area of inspection and at the same time silently take them away.

In essence, Congress passed the Wholesome Meat Act to improve the products available to consumers, yet the *Rath* holding would preempt a state law which was designed to permit the states authority in inspecting at the consumer level for the meat products that are unwholesome or short-weight. Congress should not be held to operate at such cross-purposes, especially based on the legislative evidence available in this case. The evidence is contained in the House and Senate reports on section 408, later codified as 21 USC 678.

The summaries of the section contained in House Report No. 653 and Senate Report No. 799 are identical. They provide as follows at pages 27 and 18, respectively:

Section 408 would exclude States, Territories, and the District of Columbia from regulating operations at plants inspected under Title I or from imposing marking, labeling, packaging, or ingredient requirements in addition to or different than those under the Federal Meat Inspection Act for articles prepared under inspection in accordance with Title I of this act, but would permit them to impose recordkeeping and related requirements with respect to

such plants if consistent with federal requirements and to impose requirements consistent with the federal provisions as to other matters regulated under the Act. (Emphasis added.) *U.S. Code Congressional and Administrative News*, Volume 2, 1967, p 2207.

Two other quotations from the debates might be helpful. Though the exchange occurred during the discussion of the Conference Committee report, which dealt largely with the proper role of federal inspection of intrastate processing, the discussion between Congressman Gerald Ford of Michigan (now President) and Representative Page Belcher of Oklahoma contains interesting language. At page 35151 of 113 Congressional Record (1967), the following colloquy occurs:

*Mr. Gerald R. Ford.* Within the past year, in my part of the state of Michigan, we have had a number of serious meat scandals, even under good state legislation. Those accused were prosecuted, both individuals and corporations. Under the state law, a number of convictions were achieved.

I believe we have an excellent state law. As I indicated, when violations of law did occur, convictions were obtained.

Under the conference report, can the State of Michigan continue its program and can it qualify for fifty-percent funding by the federal government?

*Mr. Belcher.* The fact of the matter is that we invite the state of Michigan and the states of Texas, Oklahoma, Kansas, or Nebraska to do the same thing that Michigan did, and the federal government will pay half of the bill.

I hope — and I believe all the conferees hope — every



state will take over the responsibility, together with the federal government, of protecting the people. . . .

President Ford, at least, was led to believe that the State of Michigan could continue its meat inspection program, both of intrastate and interstate meats.

There is nothing to indicate that the members of Congress thought that the bill would do any more than prevent states from burdening federally inspected meats before they entered the stream of interstate commerce, without affecting the traditional right of the states to regulate with regard to the meats to be offered for sale to its consumers. A good indication of the congressional view of the roles of the federal government and of the states is found in the comments of Congressman Pirnie, at page 30527 of 113 Congressional Record (1967):

An editorial in this morning's Washington Post stated clearly what I believe is the mission before us. In referring to the type of legislation needed, the editorial said:

'In our view, there are two major objectives to be sought: (1) The elimination of every pound of unclean or unwholesome meat from the market; (2) Accomplishment of this objective within the framework of our federal system, which often calls for federal aid to help the states perform their local functions instead of mere absorption of those functions by an overextended federal bureaucracy.'

My own state of New York has a meaningful meat inspection program, and has had it for some time; however, there are several states without such a program. In these states, the consumer has no guarantee whatsoever that any meat products processed, packed, and distributed solely within the borders of a state are wholesome and meet

certain minimum health and quality requirements. This meat is not subject to federal inspection because it is not involved in interstate commerce.

The solution to the problem, in my view, is not for the federal government to take over all meat inspection, permitting the states to abandon their responsibilities in this area. Nor should we turn our backs to the matter and let the states fend for themselves. The answer lies somewhere in the middle.

As the committee suggests, let us establish a federal-state partnership. We hear so frequently the term 'creative federalism', let us test its practicality in this regard. By working with the states and agreeing to share the cost and assist in the development of programs on the local level — programs with teeth in them — we will at once make significant progress toward the eventual attainment of the worthy goals outlined in the Post editorial.

Other indicative comments include those of Congressman Latta of Ohio, at page 30509 of 113 Congressional Record (1967):

The proposed legislation would enhance the state by providing for federal cooperation with appropriate state agencies in developing and administering state meat inspection programs.

At page 30516 of 113 Congressional Record (1961), Congressman Mayne of Iowa remarks:

The bill . . . is a good bill which will do much to improve meat inspection throughout the United States. Moreover, it will permit state and local governments to perform a

necessary role in this important function which is so vital to the health of our country.

I believe there is a proper role for the state governments and local governments under our federal system and that inspection of meat is a function which properly falls within their jurisdiction.

The current state of the law is that if the Court of Appeals decision is not reviewed, the states are denied their historic right to protect their citizens within their borders in this area. Thus, the consumer when he brings home the bacon will not know whether it is adulterated or of the quantity represented therein.

Respectfully submitted,

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1975  
Nos. 75-1052 and 75-1053

Supreme Court, U. S.

FILED

FEB 17 1976

MICHAEL RODAK, JR., CLERK

M. H. BECKER, as Director of the County  
of Los Angeles Department of Weights  
and Measures,

Petitioner,

v.

THE RATH PACKING COMPANY, a corporation,  
Respondent,

JOSEPH W. JONES, as Director of the  
County of Riverside, California,  
Department of Weights and Measures,  
Petitioner,

v.

GENERAL MILLS, INC., a corporation; THE  
PILLSBURY COMPANY, a corporation;  
SEABOARD ALLIED MILLING CORPORATION, a  
corporation; and THE RATH PACKING  
COMPANY, a corporation,  
Respondents,

PETITION FOR A WRIT OF CERTIORARI  
TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BRIEF OF THE APPELLATE COMMITTEE  
OF THE CALIFORNIA DISTRICT ATTORNEYS  
ASSOCIATION AS AMICUS CURIAE ON  
BEHALF OF PETITIONER

California District  
Attorneys Association by

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MOTION FOR LEAVE TO FILE AMICUS  
CURIAE BRIEF IN SUPPORT OF THE  
PETITIONS FOR WRITS OF CERTIORARI

The California District Attorneys Association, pursuant to Rule 42, of the Supreme Court Rules, respectfully petition this Honorable Court for leave to file the accompanying Amicus Curiae brief in support of Petitioners' petitions for Writ of Certiorari in the cases of Rath vs. Becker, \_\_\_F.2d\_\_\_ (1975) (Nos. 73-2481, 73-2482, 73-3902, 73-2496, 73-3180) (Hereafter, Rath), and General Mills, et al. vs. Jones, \_\_\_F.2d\_\_\_ (1975)(Nos. 74-1051, 73-3583) (Hereafter, General Mills).

The Amicus brief will be filed by the Appellate Committee of the Association. The Committee was created by the district attorneys of the several counties of California to utilize and coordinate the

resources of the district attorney's offices throughout the State for the purpose of presenting their views in cases which may have major impact upon their functions and the performance of their duties in their quest to protect the citizens of their respective counties.

After reviewing the matter presented herein, the Appellate Committee concluded that the cases of Rath and General Mills will have a major impact upon the ability of the State of California to enforce short-weight regulations and to protect the California consumer from fraudulent practices.<sup>1/</sup> Rath and General Mills held that federal law

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<sup>1/</sup> The district attorney in California is charged with the enforcement of the various laws in the field of consumer protection. Any district attorney may bring an action for injunctive relief against persons who engage in unfair competition which includes unfair or fraudu-

preempted California Business and Professions Code §12211 and the procedures used by California in the enforcement of Bus. & Prof. Code § 12607 both of which sections were or would have been utilized by the several district attorneys in bringing actions against Rath and General Mills, et al.

Because of the concern of the California district attorneys about the impact of Rath and General Mills upon the continued viability of these stricken provisions, the California District Attorneys Association authorized its

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lent business practice and unfair deceptive, untrue or misleading advertising (California Civil Code §3369); to prevent violations of California's Bus. & Prof. Code §§17500 et seq. which concern false advertising (Bus. & Prof. Code §17535); for recovery of civil penalties in cases of false advertising (Bus. & Prof. Code §17536); to bring an action for civil damages and injunctive relief to restrain violations of the Sherman Food, Drug, and Cosmetic Law (California Health and Safety Code §§2600 et seq.)



Appellate Committee to seek permission to file the instant amicus brief.

The Amicus Curiae Brief will show the extensiveness of California's involvement in this area of consumer protection and the significance of Rath and General Mills to the enforcement of local regulations of weights and measures. California Department of Agriculture tables are attached as an appendix to the Brief showing the various results of weight inspection in different types of food products, and the amounts rejected as short-weighted. Amicus will

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which includes provisions concerning packaging, labeling, and advertising (Cal. Health and Safety Code §§26850, 26851). Furthermore, Bus. & Prof. Code §12024 provides that every person who sells any commodity in less quantity than he represents it to be is guilty of a misdemeanor, and since the district attorney "shall attend the courts, and conduct on behalf of the people all prosecution for public offenses", Cali-

also present legal arguments which were not fully developed by other briefs, which arguments relate to the "local" nature of the field of regulations involved in Rath and General Mills, and also relate to Amicus' position that the federal laws in this area, by the very nature of their application in theory and in practice, do not extend to food products which are not in interstate commerce. (See attached brief, pp. 33-40.)

For the reasons set forth above the California District Attorneys Association request that it be granted leave to file

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ifornia Government Code §26500, and "public offense" include misdemeanors, California Penal Code §16, the various district attorneys are involved in criminal prosecutions arising from such violations.

the attached brief prepared by its  
Appellate Committee.

Respectfully submitted on behalf  
of the California District Attorneys  
Association,

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By Arjuna T. Saraydarian  
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JURISDICTIONAL GROUND

The California District Attorneys Association as amicus curiae, respectfully files this brief pursuant to Rule 42, of the Supreme Court Rules.

SUMMARY OF ARGUMENT

The questions presented by Rath and General Mills are significant because of the great extent that the State of California is involved in protecting its consuming public. The matter of whether State officials can order short-weighted food products off-sale has been presented to different Circuits resulting in different decisions. These reasons warrant a Writ of Certiorari.

In addition, an analysis of the opinions of the Court of Appeals, although persuasive at first glance, does not withstand analytical scrutiny. The matters regulated here involve items which are no longer in interstate commerce and there was no intent to preempt same. In fact, careful analysis of the applicable legislation indicates

a clear Congressional intent to join with the States in protecting the consuming public.



STATEMENT OF THE CASE

Actions were filed in Los Angeles and Riverside counties of the State of California against Rath Packing Company (hereafter Rath) for civil penalties and injunctive relief, charging Rath with the continued sale of short-weighted packages of bacon. It was alleged that the net weight contents of packages of bacon which were processed, packaged, labeled, sold, and distributed by Rath were, when offered for retail sale to the consuming public, frequently found to weigh less than the net weight stated thereon, thus causing consumers to be deceived and misled by sale of such "misbranded" food. At one time, while less than 2% of the packages of various brands of bacon inspected by county inspectors were found to weigh less than the amount stated on the face of the

packages, in the case of bacon packaged by Rath, approximately 50% of the samples were found to be short-weighted. The difference between the net weight stated on the labels and the actual net weight of the contents of the packages of Rath bacon when offered for retail sale to the consuming public were found to range from 1/16 ounce to 1½ ounces. (People's brief in the case of People vs. Rath, page 4)2/.

Local county officials had conducted their inspections in accordance with the procedures set forth in 4 California Administrative Code Chapter 8, subchapter 2, article 5, which were promulgated by the California Director

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2/ People vs. Rath, California Court of Appeal, Second District, 2d Civ. No. 42367 - Clerk's trans. p. 100, line 1-5, p. 538, line 17 to p. 539, line 24.

of Agriculture pursuant to his authority under California's Business and Professions Code § 12211.

The General Mills case involves the packaging and weighing of flour sold to consumers for home use. General Mills, et al. manufacture, package, label, and distribute wheat flours.

The State of California has been extensively active in the inspection of short-weighted consumer products (Appendix ) and has for years protected the California consuming public. Local inspectors of the several California counties have performed their inspections and done so within the full knowledge of the federal compliance

officers<sup>3/</sup>, the latter for the most part, relying upon the local inspectors for the day-to-day monitoring of such consumer products. (Rep. Tr. pp. 371-76, 383-84).

Rath filed an action in the U.S. District Court, Central District, California, seeking to enjoin directors of county department of weights and measures from applying provisions of the California law (Bus. & Prof. Code § 12211 and its implementation in the Cal. Admin. Code) on, among other things, the ground that such State law is preempted by provisions of the Federal Wholesome Meat Inspection Act (WMA) (21 USC, §§

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<sup>3/</sup> Vinton L. Hutchings, Officer-in-Charge, Western Region, USDA Compliance staff, supervises seven USDA compliance officers for the twelve western states (including Alaska and Hawaii) (Rep. Tr. pp. 371-76).



601 et seq.) The District Court agreed with Rath. Rath Packing Company vs. Becker, 357 Fed. Supp. 529 (1973).

General Mills and other Millers filed an action in the same District Court seeking relief similar to that of Rath, claiming that California law (Bus. & Prof. Code §§ 12211 and 12607, Cal. Admin. Code Ch. 8, subch. 2) was preempted by the Provisions of the Federal Food, Drug and Cosmetic Act (FDCA) (21 USC, §§ 301 et seq.). The District Court again agreed with the Plaintiffs General Mills, et al. vs. Jones, Civil Action No. 73-715-R (1973) (Memorandum Opinion.<sup>4/</sup>

Both Rath and General Mills were appealed to the U.S. Court of Appeals,

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<sup>4/</sup> Said Opinion is attached to the decision of the 9th Circ. U.S. Court of Appeals (No. 74-1051) as an appendix thereto.

Ninth Circuit, and on October 29, 1975, said court rendered its decision in these cases (Nos. 73-2481, 73-2482, 73-3092, 73-2496, 73-3180, 73-3583, 74-1051) holding inter alia that (a) The Wholesome Meat Act of 1967 (21 USC, §§ 601 et seq., and 9 CFR, 317.2 (h)(2) preempt California Bus. & Prof. Code § 12211 and 4 Cal. Admin. Code Ch. 8, subch. 2, art. 5, 5.1 and partially preempt California Bus. & Prof. Code § 12607. And, (b) The Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and 21 CFR, 1.86(q) preempt Bus. & Prof. Code §12211 and 4 Cal. Admin. Code Ch. 8, subch. 2, 2.1.

ARGUMENT

## I

CERTIORARI IS APPROPRIATEWHERE THE QUESTIONSRAISED ARE SIGNIFICANT

Certiorari is appropriate where a particular question is important and recurring. Glus vs. Brooklyn Eastern District Terminal, 359 U.S. 231 (1959). The significance and importance of the area of the law concerning the protection of the consumer is reflected in the statutory scheme and the legislative history of the various provisions of law that regulate meat and flour products. For example, the Federal Wholesome Meat Act of 1967 contains the finding that:

"...Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat

food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers of meat and meat food products, as well as injury to consumers."

21 USC, §602.

Such a statement of purpose would likewise apply to flour products and other consumer products. The growing field of regulation of such products and the enforcement of consumer protection laws through law enforcement agencies and consumer protection bureaus attest the significance of and inherent probability of the recurrence of the ques-



tions raised by the Rath and General Mills cases. The U.S. District Court in Rath vs. Becker, 357 Fed. Supp. at page 534 held that 9 CFR, 317.2 (h)(2) which is the purported implementation of 21 USC, §601(n)(5) was "void for its inadequacy to set any recognizable standards\*\*\*." The Court of Appeals reversed this ruling but observed:

"We note the public importance of this question, and the possibility of review of our judgment herein". \_\_\_\_ F. 2d \_\_\_\_, (Slip opinion, page 19).

The Court of Appeals in fact stated that it attempted to "make it clear that by this (General Mills) decision (we) do not deprive California of its unquestioned right to exercise its police powers in the regulation of weights and measures so as to prevent the sale to consumer of

packaged flour and other foods which do not weigh what their labels say they do." \_\_\_\_ F. 2d \_\_\_\_ (Slip opinion, p. 50). But, the Court proceeded to do precisely what it said it did not attempt to do, that is, strike down California's exercise of its police powers.

These rulings are significant for the following reasons: a) The dual ruling in Rath that 9 CFR, 317.2 (h)(2) is not "impossible of application" and that the particular California laws and regulations are invalid leaves the hundreds<sup>5/</sup> of California inspectors of weights and measures with no guidelines other than the words "reasonable varia-

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<sup>5/</sup> As of this writing, there are 404 certified county inspectors and 67 state certified inspectors in California (Information obtained from the State of California Department of Weights and Measures.

tions". The issue will hardly lie dormant. Each such inspector will have to determine what in his opinion is a "reasonable variation" and the doors will be opened for gross inequality in the enforcement of short-weight laws and the protection of consumers in various parts of the state. b) The Court's ruling in General Mills (Slip opinion, page 48) is puzzling. The Court stated that "The federal law requires 'accurate' weight, proscribing packages that are overweight as well as underweight" and thus California law is invalid because the latter "only proscribes sale of lots of packages whose average actual weights are less than the label weights." Aside from the Court's strange worry about the sale of overweight products to consumers, it apparently failed to grasp the significance of what it was

saying, that is, in order to conform to FPLA, a valid California regulation must proscribe any package which weighs more or less than the "accurate" weight. Thus, in its analysis of the FPLA, the court completely ignored its conflicting and contrary analysis of the FDCA and the WMA (see General Mills, p. 47) which took into consideration "reasonable variations" that inevitably occur when packages, due to various causes, including loss of moisture, do not reflect "accurate" weights.

Amicus respectfully suggests that the decisions in Rath and General Mills create significant issues and are of sufficient importance to warrant a hearing before the United States Supreme Court.



## ARGUMENT

## II

CERTIORARI IS APPROPRIATEWHERE A CONFLICT EXISTSBETWEEN CIRCUITS

Where a question of particular significance has been raised in various parts of this country and conflicting decisions have been rendered by different courts of appeals, certiorari would lie to resolve the conflict.

F.T.C. vs. Flotill Products, Inc., 389

U.S. 179 (1967); N.L.R.B. vs. Metro-

politan Life, 380 U.S. 438 (1965);

Charles Dowd Box Co. vs. Courtney, 368

U.S. 502 (1962); Jarecki vs. G. D.

Searle & Co., 367 U.S. 303 (1961);

Knetsch vs. U.S., 364 U.S. 361 (1960);

Mitchell vs. Robert DeMario Jewelry,

Inc., 361 U.S. 288 (1960)

In General Mills, Inc., et al.,

vs. Furness, 398 Fed. Supp. 151

(1974), Plaintiffs brought action seeking injunctive and declaratory relief in an effort to invalidate the New York City weights and measures ordinance. The trial court held that the city had wide discretion in determining what variations from stated weights were reasonable, and even though it appeared that the city ordinance was substantially more stringent than the applicable federal statute, as applied, the Plaintiffs' claim that the ordinance was preempted by the Federal Fair Packaging and Labeling Act,<sup>6/</sup> was not sustained. The Court of Appeals, Second Circuit, affirmed the judgment. 508 F. 2d 836. Also,

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<sup>6/</sup> 15 USC §1451 et seq., and the Food, Drug and Cosmetic Act, 21 USC, §301 et seq.

where the questions raised are of importance to federal-state relations, certiorari would be granted. Leiter Minerals, Inc., vs. U.S., 352 U.S. 200 (1957). In the enforcement of the California statutes and regulations involved here, there has been cooperation and mutual reliance between federal compliance officers and the local weights and measures officials, the latter performing most of the day-to-day inspections of, among other things, the products involved in Rath and General Mills. (See testimony of V. L. Hutchings, reproduced at pages 79-82 of L. T. Wallace's Petition for a Writ of Certiorari. The testimony of this Federal Compliance Officer shows that when it comes to regulation of local weights and measures, these officers defer to the local officials

of weights and measures because they are unable and/or unwilling to assume such duties.<sup>7/</sup>

This cooperative effort to protect the consumer apparently enjoys congressional sanction since the concluding portion of 21 USC, §678 reads:

"\*\*\*but any State\*\*\* may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subch. I, for the purpose of preventing the distribution for human food purposes

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<sup>7/</sup> In fact, as set forth in Argument infra, it is doubtful if local enforcement even is within the proper jurisdiction of federal compliance officers.



of any such articles which are adulterated or misbranded and are outside of such an establishment\*\*\*. This chapter shall not preclude any State\*\*\*from making requirement or taking other action, consistent with this chapter with respect to any other matters regulated under this chapter."

In addition, as set forth in footnote of L. T. Wallace's Petition for Writ of Certiorari in the Rath case, at least thirteen states in the union support the granting of certiorari and by so doing these states are also involved in and fully committed to the protection of the consuming public in their various jurisdictions in coopera-

tion with federal authorities. Amicus respectfully suggests that a Writ of Certiorari would be appropriate under these circumstances because there are conflicting opinions in this area which affect federal-State and State-State relations and a resolution of the questions raised is necessary.

## ARGUMENT

## III

ERRONEOUS DECISIONS  
INVOLVING SIGNIFICANT  
ISSUES SHOULD NOT BE  
ALLOWED TO STAND

## A

THE STATE OF CALIFORNIA  
HAS NONCONFLICTING AND  
CONCURRENT JURISDICTION  
IN THE AREA OF PACKAGING  
AND SALE OF  
CONSUMER PRODUCTS

In holding that the applicable California statutes and regulations are preempted by federal law, the trial court and the Court of Appeals ruled that the statistical variations allowed by California from the accurate weight standard imposed by 21 USC §601(n)(5), in the absence of valid

regulations permitting reasonable variations thereunder, created a net weight labeling standard "different than" the federal standard.

California Bus. & Prof. Code §12211, in part, provides that "Each sealer shall, from time to time, weigh or measure packages, containers or amounts of commodities sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being sold in accordance with law. The director is hereby authorized and directed to adopt and promulgate necessary rules and regulations\*\*\*. Any such rule or regulation\*\*\*shall not require higher standards and shall not be more restrictive than regulations, if any, promulgated by the Department of

Health, Education and Welfare, Food and Drug Administration, under the provisions of the Federal Food, Drug and Cosmetic Act." (Emphasis added.)

California Health and Safety Code §26551 refers to labeling requirements of packaged food and reads in part:

"Any food is misbranded if it is in package form, unless it bears a label containing all of the following information:

"...(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

"Reasonable variations from the requirements of subdivision (b) shall be permitted." (Emphasis added.)

California Bus. & Prof. Code §12211, stricken by the Court of Appeals, must be taken in pari materia with Health & Safety Code §26551, and must be interpreted in light of its reference to the requirement that the packaging and labeling be done "in accordance with law" and its reference to the FDCA. California's Director of Agriculture had promulgated in the California Administrative Code procedures which were stricken by the Court of Appeals, which procedures were being used as a tool for inspectors of weights and measures to implement the consumer protection laws. Such regulations were obviously subject to any other provision of law, whether State or federal, including allowance for "reasonable variations."

There was no conflict between



the federal law and the State statute and regulations.

This rationale would apply to the General Mills case as well as to the Rath case.

B

THE STATE IS FREE TO  
REGULATE PRODUCTS WHICH  
NO LONGER ARE IN  
INTERSTATE COMMERCE

The Court of Appeals made much ado of 21 USC, §678, which, at first glance, would seem to prohibit the enactment of requirements by a State which are "in addition to, or different than those made under this act," and "marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this act."

The above language of 21 USC, §678, applies "with respect to premises, facilities and operations of any establishment at which inspection is provided under subch. I." Subch. I includes 21 USC, §§201-624.

First, in enacting the WMA, Congress was concerned about "effective regulation of meat and meat products in interstate or foreign commerce,\*\*\* and (that) regulation by the Secretary and cooperation by the States and other jurisdictions as contemplated by the Act (are) appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers." 21 USC, §602. (Emphasis added.)

21 USC, §603, reads in part: For the purpose of preventing the use in commerce of meat and meat food products which are adulterated, the Secretary shall cause to be made,\*\*\* an examination and inspection of all cattle\*\*\*before they shall be allowed to enter into slaughtering, packing,

meat-canning, rendering, or similar establishment in which they are to be slaughtered.\*\*\*" (Emphasis added.)

21 USC, §606 provides that "\*\*\* the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishments,\*\*\*" (Emphasis added.)

21 USC, §607(d) provides that "No article subject to this title (21 USC, §§601-624) shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading,\*\*\*" (Emphasis added.) The qualification that the meat or products be in "commerce"

is repeated in 21 USC, §§608, 609, 610, 619 and 624.

"Commerce" is defined in 21 USC, §601(h), as follows: "The term 'commerce' means commerce between any State, any Territory, or the District of Columbia, and any place outside thereof, or within any Territory not organized with a legislative body, or the District of Columbia."

The conclusion is obvious. The prohibitive language of USC, §678, relied upon by the Court of Appeals in Rath simply does not apply to items which are no longer "in commerce," i.e., those that have left commerce and are awaiting intrastate sale to a vulnerable consumer.

In fact Congress contemplated State activity in this area since in 21 USC, §607, the Secretary of Agri-

culture is mandated to consult with states:

"There shall also be consultation between the Secretary and an appropriate advisory committee provided for in §301 of this Act (21 USC, §661), prior to the issuance of such standards under this Act\*\*\*, to avoid, insofar as feasible, inconsistency between federal and State standards." 21 USC, §607(c). (Emphasis added.)

21 USC, §661, further reflects the congressional view of the authority of a State:

"(a) It is the policy of the Congress to protect the consuming public from meat and meat food products



that are adulterated or misbranded and to assist in efforts by State and other government agencies to accomplish this objective."

Moreover, 21 USC, §661, specifically makes reference to the development by a State of requirements at least equal to those imposed under 21 USC, §§601-624, 671-680, and excludes the Secretary from interference unless such regulations have failed to be developed or enforced by a State. 21 USC, §661(c). The Secretary is otherwise authorized to cooperate with appropriate State agencies in developing and administering State programs under State laws containing authorities at least equal to those provided in (21 USC, §§641-645). 21 USC, §661(a)(2). Small wonder that V. L. Hutchings, USDA Regional

Compliance Officer, testified in the trial court that "we do not normally make a review in the retail stores," and "The government agency (such as County Department of Weights and Measures) which was doing the testing would advise us of (that) difference in weight." (See pages 78, 81 of Petitioner Wallace's brief for Writ of Certiorari in the Rath case.)

The Court of Appeals, in both Rath and General Mills, recognized that the State has the unquestioned right to exercise its police powers in regulation of weights and measures. (General Mills, Slip opinion, pp. 41, 50), and that California is free to enact "other" statutes and regulations which do not offend §678 (21 USC). (Rath, Slip opinion p. 29). What the Court of Appeals failed to recognize

was that the police power of the state, historically and presently recognized, Swift & Co. vs. Wickham, 230 Fed. Supp. 398, 402-403, appeal dismissed, 382 U.S. 111 (1965); Savage vs. Jones, 225 U.S. 501 (1912); Sligh vs. Kirkwood, 237 U.S. 52 (1915) was not infringed upon by the Congressional enactments of the WMA, FDCA and FPLA because such acts apply to goods and products in interstate commerce and not to goods and products upon which the State exercises primary jurisdiction.<sup>8/</sup>

Both federal and State governments have a role here. Federal regulations would be applicable where a main plant is producing commodities which will

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<sup>8/</sup> See H. P. Hood & Sons vs. DuMond, 336 U.S. 525 (1948).

enter interstate commerce<sup>9/</sup> and State regulations where such commodities come to rest in the supermarkets and grocery shops of the localities in the various States and assume a "local" nature. (See, e.g., Parker vs. Brown, 317 U.S. 341, 360 (1943).) At this point the interests of the State become paramount and the need to protect the particular public becomes urgent.

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<sup>9/</sup> See Michelin Tire Corp. vs. Wages, \_\_\_\_\_ U.S. \_\_\_\_\_, (No. 74-1396) (1975), where taxing by State of goods no longer in import transit was upheld by this Supreme Court.

UNCONSTITUTIONAL ACTS OF  
CONGRESS WHICH INFRINGE  
UPON THE RIGHTS OF THE  
STATES ARE REVIEWABLE  
BY THIS COURT

If, in the face of State legislation which protects the local consumer, the federal laws in this area are held to be preemptive, then there exists a serious question of Congressional violation of the Tenth Amendment to the U.S. Constitution which reserves to the States the powers not delegated to the United States. Thus, if, as the Court of Appeals held, and notwithstanding the above argument of Amicus, Congress has enacted provisions which violate the U.S. Constitutions, then, of course, such provisions would be subject to review by this Supreme Court.

McCulloch vs. Maryland, 4 Wheat. (17 U.S.) 316 (1819). One hundred and thirty-six years ago, this Supreme Court chose to plant itself on what it considered these "impregnable positions": "That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That by virtue of this, it is not only the right, but the obligation and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem conducive to these ends; where the power over the particular subject, or the manner of its exercise is not



surrendered or restrained, in the manner just stated. That all these powers which relate merely to municipal legislation or what may, perhaps, more properly called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive." New York vs. Miln, 36 U.S. 102, 139, (1837). (See also Huron Portland Cement Co. vs. Detroit, 362 U.S. 440 (1960), Kelly vs. Washington, 302 U.S. 1 (1937)).

The State of California has been active in protecting its consumers in order to assure that such consumers receive the full value of their dollars in goods and products bought by California retailers. The Appendix attached to this brief, based upon the official

records of the California Department of Weights and Measures, typifies such effort. Seventeen (17) classifications are listed for various commodities that are monitored by the California Bureau of Weights and Measures. Examination of the percentages of packages rejected as short-weighted indicates how extensively does California protect its consuming public. Of particular significance in the compilation are the percentages of rejection in items which have very little or no loss due to moisture. For example, the category of chicken, fresh and frozen, (Appendix, p. 77) shows that between 13.43% to 44.85% of those items inspected between the dates of July of 1972, to September of 1975 were rejected as short-weighted. These are the short-weighted amounts which would have been sold to unsuspecting consumers. A

similar conclusion may be drawn from Appendix, pp. 6,14,22,30,38,56,54,62 and 70 by examining Code 4.04 (canned meat) which would have no loss due to moisture. The rejections in this category between September 1974, to September, 1975, range from 0% to 39.40%. In other words, in the absence of day-to-day State and local regulation, those percentages would be translated to a loss for the consumer.<sup>10/</sup>

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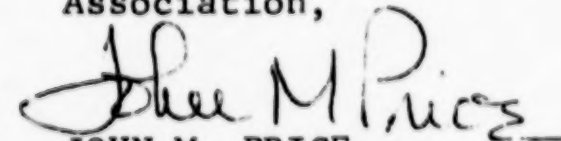
<sup>10/</sup> e.g. In Sacramento County alone, there are presently pending three such consumer fraud cases: People vs. Armour & Co. Inc., (Superior Court No. 252343), People vs. Galileo-Capri Salame, (Superior Court No. 251855), and People vs. Gallo Salami, (Superior Court No. 251856.) In addition, records of the Sacramento County Director of the Agricultural Commission and Sealer of Weights and Measures, W. Leland Brown, indicates that 474 off-sale orders were issued in the County of Sacramento, between the dates of January of 1975 and December 31, 1975, on various products.

Amicus respectfully suggests that California's efforts to extend to its consuming public the protections heretofore accorded should not be so easily and readily thwarted.

#### CONCLUSION

On the basis of the aforementioned reasons, Amicus respectfully prays this Court grant the Petition for Writ of Certiorari to review the judgment and orders of the Court of Appeals of the Ninth Circuit.

Respectfully submitted on behalf of the California District Attorneys Association,



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## APPENDIX

The attached pages 1 through 77 represent the official compilation by the California Department of Weights and Measures of statistics obtained from each local county department of weights and measures. Thus, the information contained herein represents the activities of local inspectors and the results of such inspection of various commodities from September, 1974, through September, 1975. The last page (77) taken from the same statistics over a longer period of time, is a summary for one item to show the substantial percentage of sub-standard chicken which was rejected throughout the State.

Revised April 22, 1971

### COMMODITY CLASSIFICATION LIST INDEX

1.00	Confections and Flavorings
2.00	Dairy-type products
3.00	Bakery goods - fresh, canned or frozen
4.00	Meat, fish, poultry
5.00	Cooking oils, salad dressings, condiments
6.00	Milling products
7.00	Produce
8.00	Other food preparations
9.00	Beverages
10.00	Pharmacy products
11.00	Garden, farm, pet supplies
12.00	Hardware and building materials
13.00	Paint and allied products
14.00	Maintenance supplies
15.00	Paper products
16.00	Textile products
17.00	Miscellaneous



# COMMUNITY CLASSIFICATIONS LIST INDEX

## 1.00 CONFECTIONS & FLAVORINGS

- 1.01 - Penny Goods
- 1.02 - Par Goods except Sol. Cho. Bars
- 1.03 - Confectionery-type Chocolate
- 1.04 - Chocolate Coatings and Syrups
- 1.05 - Other Flavoring Agents except Cho.
- 1.06 - Packaged Goods except Sol. Cho.
- 1.07 - Bulk Goods except Sol. Cho.
- 1.08 - Salted Nuts and other Conf. Prod.
- 1.09 - Sweetening Syrups and Molasses
- 1.10 - Flavoring Extracts, Emul., other Flavorings
- 1.11 - Salt
- 1.12 - Pepper
- 1.13 - Cane and Beet Sugar Refined
- 1.14 - Herbs and Spices
- 1.15 - Baking Powder & Yeast
- 1.16 - Tenderizers
- 1.40 - Confections & Flavorings, N.E.C.

## 2.00 DAIRY-TYPE PRODUCTS

- 2.01 - Evap. Inc. Liq., Dried & Froz.
- 2.02 - Creamery Butter
- 2.03 - Margarine
- 2.04 - Natural Cheese except Cottage Ch.
- 2.05 - Processed Cheese and Rel. Prods.
- 2.06 - Cottage Cheese
- 2.07 - Sour Cream & Yogurts, Inc. Imit.
- 2.08 - Ice Cream and Ices
- 2.09 - Ice Cream Mix & Ice Milk Mix
- 2.10 - Bars, Popsicle, Ice Cream, Ices, Fruit
- 2.11 - Canned & Evaporated Milk
- 2.12 - Dry Milk Prods. & Non-Dairy Cream
- 2.13 - Packaged Milk and Cream
- 2.14 - Buttermilk, Choc. Drink, Other Milk Drinks
- 2.15 - Other Dairy Drinks
- 2.16 - Puddings, Toppings, & Instant Bkfst.
- 2.17 - Dips and Salads
- 2.40 - Dairy-Type Products, N. E. C.

## 3.00 BAKERY GOODS - CANNED, FRESH, OR FROZEN

- 3.01 - Bread and Bread-Type Rolls
- 3.02 - Breading, Crumbs, Croutons, & Dress.
- 3.03 - Soft Cakes
- 3.04 - Pies
- 3.05 - Doughnuts
- 3.06 - Pastries & Cookies
- 3.07 - Sweet Yeast Goods
- 3.08 - Biscuits, Crackers, & Pretzels
- 3.09 - Other Dry Bakery Products
- 3.10 - Chips, Potato, Corn, etc.
- 3.11 - Tortillas & Allied Products
- 3.12 - Sandwiches
- 3.13 - ~~Wheat Pies~~
- 3.40 - Bakery Goods, N.E.C.
- 3.40 - Prepackaged Bakery Goods (Audits)

## 4.00 MEAT, FISH, POULTRY

- 4.01 - Canned Packaged Fish & other Seafood
- 4.02 - Frozen Packaged Fish & other Seafood
- 4.03 - Fresh Packaged Fish & other Seafood
- 4.04 - Canned Meats
- 4.05 - Beef, Fresh & Frozen
- 4.06 - Veal, Fresh & Frozen
- 4.07 - Pork, Fresh & Frozen
- 4.08 - Lamb, Mutton, Fresh & Frozen
- 4.09 - Processed Meats
- 4.10 - Sausage Casings & Other Prod. Meats
- 4.11 - Canned Poultry
- 4.12 - Chickens, Fresh & Frozen
- 4.13 - Turkeys, Fresh & Frozen
- 4.14 - Other Poultry & Small Fowl
- 4.40 - Meat, Fish, Poultry, N.E.C.
- 4.40 - Prepackaged Meats (Audits)

## 5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENT

- 5.01 - Refined Cottonseed Oil
- 5.02 - Cottonseed Cake, Meal, Other By-Products
- 5.03 - Soybean Oil
- 5.04 - Other Vegetable Oils
- 5.05 - Other Vegetable Oil Products
- 5.06 - Animal & Marine Oil Products
- 5.07 - Shortening and Cooking Oils
- 5.08 - Salad Dressings, Mayonnaise, Sand. Spreads
- 5.09 - Meat Sauces
- 5.10 - Vinegar and Cider
- 5.40 - Cooking Oils, Salad Dress. Condiments, N.E.C.

## 6.00 MILLING PRODUCTS

- 6.01 - Cereals, Breakfast Foods
- 6.02 - Wheat Bran and Milling
- 6.03 - Corn Meal
- 6.04 - Wet Corn Meal
- 6.05 - Milled Rice and By-Products
- 6.06 - Prepared Flour and Flour Mixes
- 6.07 - Grain Mill Products, N.E.C.
- 6.08 - Macaroni and Allied Foods
- 6.09 - Other Food Preparations, N.E.C.
- 6.40 - Milling Products, N.E.C.

## 7.00 PRODUCE

- 7.01 - Dried and Dehy. Fruits and Vegetables
- 7.02 - Canned Fruits and Vegetables, N.E.C.
- 7.03 - Frozen Fruits and Vegetables
- 7.04 - Fresh Fruit and Vegetables
- 7.05 - Canned Hominy & Mushrooms
- 7.06 - Canned Dry Beans
- 7.40 - Produce, N.E.C.
- 7.40 - Prepackaged Fruits & Vegetables, (Audits)

## 8.00 OTHER FOOD PREPARATIONS

- 8.01 - Jams, Jellies, & Preserves
- 8.02 - Peanut Butter & P. Butter Mixes
- 8.03 - Honey & Honey Mixes
- 8.04 - Pickles & other Pickle Prods.
- 8.05 - Soup Mixes
- 8.06 - Canned Soups, except Seafood
- 8.07 - Canned Soups, Seafood
- 8.08 - Frozen Soups
- 8.09 - Catsup & other Tomato Sauces
- 8.10 - Canned Baby Food, except Meat
- 8.11 - Other canned specialties
- 8.12 - Desserts, Ready to Mix
- 8.40 - Other Food preparations, N.E.C.

## 9.00 BEVERAGES

- 9.01 - Malt Liquors & Brewing By-Products
- 9.02 - Wine, Brandy, & Brandy Spirits
- 9.03 - Bottled Liquors
- 9.04 - Pack. Ready-to-Serve Mixed Dr.
- 9.05 - Packaged Soft Drinks
- 9.06 - Flavoring Syrups, Soft Drinks
- 9.07 - Beverage Bases except Syrups, Concentrated Juices
- 9.08 - Frozen Fruit Juices and Ales
- 9.09 - Canned or Bottled Fruit Juices
- 9.10 - Roasted Coffee, Whole Bean or Ground
- 9.11 - Concentrated Coffee
- 9.12 - Coffee Substitutes
- 9.13 - Tea, Leaf Form
- 9.14 - Concentrated Tea
- 9.15 - Canned or Bottled Veg. Juices
- 9.16 - Canned or Bottled Water
- 9.17 - Choc. & Cocoa Prods. not Confect.
- 9.18 - Manufactured Ice
- 9.40 - Beverages, N.E.C.

## 10.00 PHARMACY PRODUCTS

- 10.01 - Prescription Drugs
- 10.02 - Pack. Medications, N.E.C.
- 10.03 - Internal Analgesics
- 10.04 - Ext. Analgesics & Antiseptics
- 10.05 - Cough & Cold Items
- 10.06 - Laxatives
- 10.07 - Vitamins
- 10.08 - Dentifrices, Inc. Mouthw., Garg., Rinses
- 10.09 - Shaving Preparations
- 10.10 - Razor Blades & Razors not electric
- 10.11 - Perfumes, Toilet Water, Colognes
- 10.12 - Other Cosmetic & Toilet Prep.
- 10.13 - Hair Prep., Inc. Shampoos
- 10.14 - Baby Powder
- 10.15 - Baby Oils and Lotion
- 10.16 - Medical Adhesive Tape
- 10.17 - Adhesive Bandages & Compresses
- 10.18 - Cotton, Medical
- 10.19 - Devices, Medical
- 10.40 - Pharmacy Products, N.E.C.

## 11.00 GARDEN, FARM, PET SUPPLIES

- 11.01 - Charcoal
- 11.02 - Hickory & other Wood Chips
- 11.03 - R-B-Q Starters & Matches
- 11.04 - Firewood & Kindling
- 11.05 - Household Insecticides & Repellents
- 11.06 - Economic Poisons, N.E.C.
- 11.07 - Superphosphate & Phosphatic Fert.
- 11.08 - Mixed Fert., Fert. of Organic Origin
- 11.09 - Peat Moss, Bark, Mulches, Soil Cond.
- 11.10 - Poultry Feeds
- 11.11 - Livestock Feeds, Inc. Salt Licks
- 11.12 - Dog and Cat Foods
- 11.13 - Other Prepared Animal Feeds
- 11.14 - Pet & Animal Supplies, N.E.C.
- 11.15 - Vegetable & Agricultural Seeds
- 11.16 - Flower Seeds, Bulbs, Plants & Sap.
- 11.17 - Rock, Sand, & Gravel
- 11.18 - Garden Tools & Related Products
- 11.40 - Garden, Farm, Pet Supplies, N.E.C.

## 12.00 HARDWARE AND BUILDING MATERIALS

- 12.01 - Nails, Tacks, Brads, & Rivets
- 12.02 - Bolts, Nuts, Washers, & Screws
- 12.03 - Furniture Hardware
- 12.04 - Builders Hardware
- 12.05 - Other Hardware
- 12.06 - Electrical Equip. & Supplies
- 12.07 - Plumbing Equip. & Supplies
- 12.08 - Tile & Tile Supplies
- 12.09 - Lime & Fireclay
- 12.10 - Cement, Stucco, Plaster, & Cem. Color
- 12.11 - Dry Mortar & Concrete Mix
- 12.12 - Flooring Prods., except Rugs & Lin.
- 12.13 - Linoleum
- 12.14 - Door & Windows
- 12.15 - Moulding & Lumber
- 12.16 - Sheeting Panels, Paneling, & Wall-board
- 12.17 - Building Paper, Felt, & Plastic Coverings
- 12.18 - Starter Rolls, Rolled Roofing, Composition Shingles
- 12.19 - Wood Shingles, Shakes, & Accessory Supplies
- 12.20 - Metal Roofing Products
- 12.21 - Fiberglass Roofing, Sheets, & Rolls
- 12.22 - Wire Products, Fencing, Posts, & Flashings
- 12.40 - Hardware & Building Materials, N.E.C.

### 13.00 PAINT AND ALLIED PRODUCTS

- 13.01 - Int. & Ext. Oil-Type Paints, Including Tint Bases
- 13.02 - Int. & Ext. Water-Type Paint, Including Tint Bases
- 13.03 - Lacquers
- 13.04 - Varnish Stains & Varnishes
- 13.05 - Wood Stains
- 13.06 - Rust Preventatives & Solvents
- 13.07 - Wood Preservatives
- 13.08 - Putty, Fillers, Caulking Comp., Allied Prods.
- 13.09 - Glues, Adhesives, Glines
- 13.10 - Adhesive Tapes, N.E.C.
- 13.11 - Linseed Oil
- 13.12 - Softwood Distillation Prods.
- 13.13 - Other Gum & Wood Chemicals
- 13.14 - Wallpaper
- 13.15 - Painters' Equip. & Supplies
- 13.40 - Paint & Allied Products, N.E.C.

### 14.00 MAINTENANCE SUPPLIES

- 14.01 - Bleaches and Blueing
- 14.02 - Starch
- 14.03 - Packaged Soap
- 14.04 - Packaged Synthetic Organic Deterg.
- 14.05 - Alkaline Deterg. & Acid-type Cleaners
- 14.06 - Specialty Cleaning & Maint. Prods.
- 14.07 - Polishing Prep. & Related Prods.
- 14.08 - Glycerine
- 14.09 - Dyes
- 14.10 - Sawdust & Shavings
- 14.11 - Oil or Grease Absorbents
- 14.12 - Rags, Cloths, Polishing Cloths
- 14.13 - Swimming Pool Equip. & Supplies
- 14.40 - Maintenance Supplies, N.E.C.

### 15.00 PAPER PRODUCTS

- 15.01 - Grocers, Variety, Paper Bags
- 15.02 - Specialty Bags & Liners
- 15.03 - Wrapping Prods., Gift Wrap, Ribbon
- 15.04 - Cordage & Twine
- 15.05 - Adhesive & Pressure-Sens. Tapes
- 15.06 - Party Favors, Supp., Novelties, & Sec.
- 15.07 - Paper Bedding, Towels & Wash Cloths, Table Covers & Linens, Wearing Apparel
- 15.08 - Sanitary Food Cont. & Pkg. Supp.
- 15.09 - Sanitary Napkins & Tissues
- 15.10 - Paper Towels, Toilet & Tissue Prods.
- 15.11 - Foil & Plastic Wraps
- 15.12 - Oiled, Waxed & Wax Laminated Paper
- 15.13 - Stationery, Envs., Tablets, Sch. & Off. Supplies, Related Products
- 15.14 - Photographic Film & Paper
- 15.15 - Artists Materials & Supplies
- 15.40 - Paper Products, N.E.C.

### 16.00 TEXTILE PRODUCTS

- 16.01 - Bedspreads & Bed Sets
- 16.02 - Sheets & Pillow Cases
- 16.03 - Towels & Wash Cloths
- 16.04 - Table Covers & Linens
- 16.05 - Curtains & Draperies
- 16.06 - Carpets & Rugs
- 16.07 - Carpet & Rug Padding
- 16.08 - Apparel
- 16.09 - Yardage Prods., Bolt, Roll, or Pk.
- 16.10 - Thread & Yarn, Sewing, Darning, Mending, Knitting, Crocheting, Tatting, Hand-Knitting, Embroidery
- 16.11 - Buttons, Pins, Fasteners, Similar Notions
- 16.12 - Buttons & Parts, except of precious metals
- 16.13 - Zippers & Slide Fasteners
- 16.14 - A.L. Sewing Threads, Twines, Yarn
- 16.15 - Upholstery Supplies
- 16.16 - Sleeping Bags
- 16.17 - Tents & Tarps
- 16.40 - Textile Products, N.E.C.

### 17.00 MISCELLANEOUS

- 17.01 - Cigarettes
- 17.02 - Cigars
- 17.03 - Chewing, Smoking Tobacco, Snuff
- 17.04 - Other Smoking Equip. & Supplies
- 17.05 - Fishing Tackle & Equipment
- 17.06 - Firearms, Hunting Equip. & Supplies
- 17.07 - Other Sporting & Athletic Prods.
- 17.08 - Explosives, Fireworks & Supplies
- 17.09 - Toys & Children's Items
- 17.10 - Hobby, Handicraft Equip. & Supplies
- 17.11 - Soldering Equip. & Supplies
- 17.12 - Welding Equipment & Supplies
- 17.13 - Tools, Shop Equip. & Supplies
- 17.14 - Extinguishers, Safety Prods. & Supp.
- 17.15 - Chemicals, General N.E.C.
- 17.16 - Pressurized Gases
- 17.17 - Automatic Transmission Fluids & Motor Oil
- 17.18 - Lubricating Oils, N.E.C.
- 17.19 - Lubricating Greases
- 17.20 - Brake Fluid
- 17.21 - Antifreeze
- 17.22 - Automotive Window Washer Cleaners
- 17.23 - Transportation Equip. Hardware
- 17.24 - Automotive Products, N.E.C.
- 17.40 - Miscellaneous, N.E.C.

N.E.C. - Not elsewhere Classified  
Sol. Cho. - Solid Chocolate

### DIVISION OF MEASUREMENT STANDARDS QUANTITY CONTROL SUB-CATEGORIES AND % DEFECTIVE REPORT September, 1974

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<b>1.00 CONFECTIONS AND FLAVORINGS</b>						
1.01	5	0	0%	182	0	0%
1.02	43	2	4.65%	3,916	178	4.55%
1.03	19	1	5.26%	4,374	25	.57%
1.04	0	0	0%	0	0	0%
1.05	0	0	0%	0	0	0%
1.06	139	4	2.88%	11,106	172	1.55%
1.07	12	0	0%	177	0	0%
1.08	264	4	1.52%	5,735	95	1.66%
1.09	0	0	0%	0	0	0%
1.10	0	0	0%	0	0	0%
1.11	47	2	4.26%	2,539	46	1.81%
1.12	0	0	0%	0	0	0%
1.13	172	4	2.33%	17,596	1,400	7.96%
1.14	504	23	4.56%	99,675	810	.81%
1.15	14	1	7.14%	656	19	2.90%
1.16	0	0	0%	0	0	0%
1.40	0	0	0%	0	0	0%
<b>TOTAL</b>	<b>1,219</b>	<b>41</b>	<b>3.36%</b>	<b>145,956</b>	<b>2,745</b>	<b>1.88%</b>
<b>2.00 DAIRY-TYPE PRODUCTS</b>						
2.01	0	0	0%	0	0	0%
2.02	23	3	13.04%	1,273	279	21.92%
2.03	22	2	9.09%	1,272	233	18.32%
2.04	37	0	0%	1,201	0	0%
2.05	134	4	2.99%	14,896	256	1.72%
2.06	5	5	100.00%	501	501	100.00%
2.07	14	1	7.14%	1,000	821	82.10%
2.08	0	0	0%	0	0	0%
2.09	0	0	0%	0	0	0%
2.10	0	0	0%	0	0	0%
2.11	0	0	0%	0	0	0%
2.12	4	4	100.00%	1,422	1,422	100.00%
2.13	322	22	6.83%	103,617	3,584	3.46%
2.14	9	2	22.22%	434	60	13.82%
2.15	2	1	50.00%	67	27	40.30%
2.16	20	0	0%	268	0	0%
2.17	21	0	0%	749	0	0%
2.40	2	0	0%	1,567	0	0%
2.50	822	23	2.80%	164,305	3,411	2.08%
<b>TOTAL</b>	<b>1,437</b>	<b>67</b>	<b>4.66%</b>	<b>292,572</b>	<b>10,594</b>	<b>3.62%</b>
<b>3.00 BAKERY GOODS - FRESH, CANNED OR FROZEN</b>						
3.01	315	33	10.48%	5,816	324	5.57%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	6	0	0%	70	0	0%
3.03	16	5	31.25%	156	56	35.90%
3.04	16	4	25.00%	222	43	19.37%
3.05	3	3	100.00%	5,208	5,208	100.00%
3.06	87	14	16.09%	2,921	731	25.03%
3.07	0	0	0%	0	0	0%
3.08	147	0	0%	3,110	0	0%
3.09	0	0	0%	0	0	0%
3.10	5	0	0%	478	0	0%
3.11	99	13	13.13%	5,189	309	5.95%
3.12	0	0	0%	0	0	0%
3.13	0	0	0%	0	0	0%
3.40	4	0	0%	66	0	0%
3.50	1,500	79	5.27%	231,841	8,243	3.56%
TOTAL	2,198	151	6.87%	255,077	14,914	5.85%

4.00 MEAT, FISH, POULTRY

4.01	7	2	28.57%	196	31	15.82%
4.02	23	1	4.35%	524	26	4.96%
4.03	9	5	55.56%	126	30	23.81%
4.04	0	0	0%	2,749	1	.04%
4.05	0	0	0%	1,765	126	7.14%
4.06	0	0	0%	923	6	.65%
4.07	0	0	0%	10	8	80.00%
4.08	0	0	0%	30	0	0%
4.09	0	0	0%	10,200	2,157	21.15%
4.10	0	0	0%	10,445	726	6.95%
4.11	0	0	0%	151	0	0%
4.12	0	0	0%	3,460	281	8.12%
4.13	0	0	0%	163	11	6.75%
4.14	0	0	0%	58	1	1.72%
4.40	0	0	0%	32	32	100.00%
4.50	0	0	0%	741,915	4,989	.67%
TOTAL	39	8	20.51%	772,747	8,425	1.09%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENTES

5.01	0	0	0%	0	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	0	0	0%	0	0	0%
5.05	0	0	0%	0	0	0%
5.06	0	0	0%	0	0	0%
5.07	0	0	0%	0	0	0%
5.08	15	6	40.00%	2,223	107	4.81%
5.09	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	2	0	0%	16,200	0	0%
5.40	19	1	5.26%	4,271	60	1.40%
TOTAL	36	7	19.44%	22,694	167	.74%
6.00 MILLING PRODUCTS						
6.01	12	0	0%	638	0	0%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	37	20	57.14%
6.04	0	0	0%	34	34	100.00%
6.05	107	5	4.67%	5,963	57	.96%
6.06	0	0	0%	4,707	1,000	21.24%
6.07	87	2	2.30%	1,855	574	30.94%
6.08	102	5	4.90%	6,001	126	2.10%
6.09	3	2	66.67%	48	28	58.33%
6.40	75	2	2.67%	1,332	18	1.35%
TOTAL	386	16	4.15%	20,633	1,857	9.00%

7.00 PRODUCE

7.01	186	12	6.45%	40,126	1,712	4.27%
7.02	95	3	3.15%	261,941	201	.08%
7.03	31	1	3.23%	1,840	56	3.04%
7.04	259	27	10.42%	163,457	5,200	3.18%
7.05	2	0	0%	58	0	0%
7.06	117	1	.85%	4,258	52	1.22%
7.40	12	2	16.67%	584	4	.68%
7.50	238	4	1.68%	35,632	66	.19%
TOTAL	940	50	5.32%	507,896	7,291	1.44%

8.00 OTHER FOOD PREPARATIONS

8.01	5	0	0%	63	0	0%
8.02	0	0	0%	0	0	0%
8.03	22	1	4.55%	147	9	6.12%
8.04	0	0	0%	0	0	0%
8.05	4	0	0%	244	0	0%
8.06	0	0	0%	0	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	11	3	27.27%	27,189	154	.57%
8.10	0	0	0%	0	0	0%
8.11	0	0	0%	0	0	0%
8.12	14	0	0%	683	0	0%
8.40	193	2	1.01%	5,947	12	.20%
TOTAL	254	6	2.36%	34,273	175	.51%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>9.00 BEVERAGES</u>						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	118	4	3.39%	187,458	84,734	45.20%
9.06	9	3	33.33%	1,226	428	34.91%
9.07	11	0	0%	2,000	0	0%
9.08	0	0	0%	0	0	0%
9.09	33	2	6.06%	77,459	53	.07%
9.10	0	0	0%	0	0	0%
9.11	1	0	0%	12	0	0%
9.12	1	0	0%	12	0	0%
9.13	0	0	0%	0	0	0%
9.14	0	0	0%	0	0	0%
9.15	0	0	0%	0	0	0%
9.16	7	0	0%	965	0	0%
9.17	0	0	0%	0	0	0%
9.18	15	1	6.67%	6,146	120	1.95%
9.40	11	0	0%	1,604	0	0%
TOTAL	206	10	4.85%	276,882	85,335	30.82%

10.00 PHARMACY PRODUCTS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	3	0	0%	22	0	0%
10.04	0	0	0%	0	0	0%
10.05	0	0	0%	0	0	0%
10.06	0	0	0%	0	0	0%
10.07	32	0	0%	8,283	0	0%
10.08	7	0	0%	518	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	10	0	0%	2,000	0	0%
10.12	110	1	.91%	21,676	2,136	9.85%
10.13	52	1	1.92%	10,292	1,549	15.05%
10.14	0	0	0%	0	0	0%
10.15	0	0	0%	0	0	0%
10.16	0	0	0%	0	0	0%
10.17	0	0	0%	0	0	0%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	14	1	7.14%	2,924	360	12.31%
TOTAL	228	3	1.32%	45,715	4,045	8.85%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>11.00 GARDEN, FARM, PET SUPPLIES</u>						
11.01	13	12	92.31%	531	504	94.92%
11.02	0	0	0%	0	0	0%
11.03	9	4	44.45%	13,266	324	2.44%
11.04	1	1	100.00%	5	5	100.00%
11.05	87	7	8.05%	8,453	505	5.97%
11.06	2	0	0%	350	0	0%
11.07	147	10	6.80%	24,306	127	.52%
11.08	171	2	1.17%	8,361	253	3.03%
11.09	41	1	2.44%	1,958	18	.92%
11.10	94	36	38.30%	4,443	1,261	28.38%
11.11	42	9	21.43%	2,670	640	23.97%
11.12	47	7	14.89%	5,019	315	6.28%
11.13	29	5	17.24%	561	108	19.25%
11.14	19	0	0%	1,658	0	0%
11.15	14	0	0%	346	0	0%
11.16	6	0	0%	128	0	0%
11.17	108	0	0%	19,572	0	0%
11.18	0	0	0%	0	0	0%
11.40	9	1	11.11%	117	18	15.38%
TOTAL	839	95	11.32%	91,744	4,078	4.44%

12.00 HARDWARE AND BUILDING MATERIALS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.01	95	6	6.32%	4,857	244	5.02%
12.02	18	0	0%	162	0	0%
12.03	0	0	0%	0	0	0%
12.04	0	0	0%	0	0	0%
12.05	0	0	0%	0	0	0%
12.06	33	1	3.03%	3,246	97	2.97%
12.07	6	0	0%	54	0	0%
12.08	0	0	0%	0	0	0%
12.09	16	2	12.50%	1,001	41	4.10%
12.10	105	15	14.29%	10,533	595	5.65%
12.11	5	2	40.00%	330	150	45.45%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	0	0	0%	0	0	0%
12.16	0	0	0%	0	0	0%
12.17	3	0	0%	38	0	0%
12.18	0	0	0%	0	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.22	8	0	0%	600	0	0%
12.40	13	0	0%	1,467	0	0%
TOTAL	302	26	8.61%	22,635	1,127	4.98%
<u>13.00 PAINT AND ALLIED PRODUCTS</u>						
13.01	386	3	.78%	33,703	2,118	6.28%
13.02	51	1	1.96%	3,709	102	2.75%
13.03	0	0	0%	0	0	0%
13.04	27	0	0%	2,900	0	0%
13.05	25	0	0%	2,520	0	0%
13.06	4	0	0%	200	0	0%
13.07	0	0	0%	0	0	0%
13.08	15	0	0%	1,442	0	0%
13.09	108	7	6.48%	11,878	3,477	29.02%
13.10	0	0	0%	0	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	24	0	0%	600	0	0%
13.14	0	0	0%	0	0	0%
13.15	0	0	0%	0	0	0%
13.40	7	0	0%	63	0	0%
TOTAL	647	11	1.70%	57,015	5,697	9.99%

14.00 MAINTENANCE SUPPLIES

14.01	0	0	0%	0	0	0%
14.02	0	0	0%	0	0	0%
14.03	37	1	2.70%	3,295	28	.85%
14.04	11	1	9.09%	265	15	5.66%
14.05	7	1	14.29%	217	20	9.22%
14.06	60	4	6.67%	6,555	108	1.65%
14.07	19	1	5.26%	1,483	14	.94%
14.08	0	0	0%	0	0	0%
14.09	12	0	0%	460	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	0	0	0%	0	0	0%
14.13	1	0	0%	11	0	0%
14.40	24	1	4.17%	6,615	120	1.81%
TOTAL	171	9	5.26%	18,901	305	1.61%

15.00 PAPER PRODUCTS

15.01	16	1	6.25%	823	16	1.94%
15.02	24	9	37.50%	50,073	48,008	95.88%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.03	0	0	0%	0	0	0%
15.04	0	0	0%	0	0	0%
15.05	0	0	0%	0	0	0%
15.06	2	0	0%	64	0	0%
15.07	0	0	0%	0	0	0%
15.08	95	1	1.05%	11,004	600	5.45%
15.09	8	0	0%	351	0	0%
15.10	0	0	0%	0	0	0%
15.11	0	0	0%	0	0	0%
15.12	4	0	0%	337	0	0%
15.13	37	3	8.11%	5,431	31	.57%
15.14	0	0	0%	0	0	0%
15.15	29	0	0%	6,412	0	0%
15.40	5	0	0%	800	0	0%
TOTAL	220	14	6.36%	75,295	48,655	64.62%

16.00 TEXTILE PRODUCTS

16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	0	0	0%	0	0	0%
16.08	0	0	0%	0	0	0%
16.09	0	0	0%	0	0	0%
16.10	158	12	7.59%	6,627	3,148	47.50%
16.11	0	0	0%	0	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	0	0	0%	0	0	0%
16.15	0	0	0%	0	0	0%
16.16	0	0	0%	0	0	0%
16.17	4	4	100.00%	122	122	100.00%
16.40	0	0	0%	0	0	0%
TOTAL	162	16	9.88%	6,749	3,270	48.45%

17.00 MISCELLANEOUS

17.01	6	0	0%	236	0	0%
17.02	0	0	0%	0	0	0%
17.03	8	0	0%	54	0	0%
17.04	0	0	0%	0	0	0%
17.05	0	0	0%	0	0	0%
17.06	9	0	0%	153	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.07	0	0	0%	0	0	0%
17.08	0	0	0%	0	0	0%
17.09	1	0	0%	45	0	0%
17.10	38	0	0%	1,500	0	0%
17.11	4	0	0%	365	0	0%
17.12	0	0	0%	0	0	0%
17.13	0	0	0%	0	0	0%
17.14	0	0	0%	0	0	0%
17.15	2	1	50.00%	596	96	16.11%
17.16	0	0	0%	0	0	0%
17.17	47	10	21.28%	58,028	11,153	19.22%
17.18	0	0	0%	0	0	0%
17.19	1	0	0%	2,268	0	0%
17.20	0	0	0%	0	0	0%
17.21	0	0	0%	0	0	0%
17.22	2	2	100.00%	10,991	10,991	100.00%
17.23	12	0	0%	734	0	0%
17.24	23	3	13.04%	18,916	16,128	85.26%
17.40	49	2	4.08%	9,119	2,268	24.87%
TOTAL	202	18	8.91%	104,005	40,636	39.07%
ALL CATEGORIES TOTAL	9,486	48	5.78%	2,750,789	239,316	8.70%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS AND FLAVORINGS						
1.01	3	0	0%	2,084	0	0%
1.02	39	1	2.56%	2,203	30	1.36%
1.03	19	6	31.58%	497	114	22.94%
1.04	0	0	0%	0	0	0%
1.05	0	0	0%	0	0	0%
1.06	475	26	5.47%	52,973	10,215	19.28%
1.07	0	0	0%	0	0	0%
1.08	75	3	4.00%	15,158	1,073	7.08%
1.09	0	0	0%	0	0	0%
1.10	0	0	0%	0	0	0%
1.11	23	0	0%	5,115	0	0%
1.12	0	0	0%	0	0	0%
1.13	28	0	0%	1,795	0	0%
1.14	77	0	0%	18,110	0	0%
1.15	0	0	0%	0	0	0%
1.16	0	0	0%	0	0	0%
1.40	37	0	0%	828	0	0%
TOTAL	776	36	4.64%	98,763	11,432	11.58%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	8	0	0%	13,782	0	0%
2.03	21	4	19.05%	3,853	868	22.53%
2.04	32	1	3.13%	2,598	1	.04%
2.05	36	4	11.11%	8,388	7,420	88.46%
2.06	2	0	0%	80	0	0%
2.07	0	0	0%	0	0	0%
2.08	0	0	0%	0	0	0%
2.09	5	3	60.00%	8,128	128	1.57%
2.10	0	0	0%	0	0	0%
2.11	0	0	0%	0	0	0%
2.12	0	0	0%	0	0	0%
2.13	231	14	6.06%	15,337	1,153	7.52%
2.14	1	1	100.00%	10	10	100.00%
2.15	2	2	100.00%	29	29	100.00%
2.16	0	0	0%	0	0	0%
2.17	8	0	0%	138	0	0%
2.40	0	0	0%	0	0	0%
2.50	741	22	2.97%	145,884	14,680	10.06%
TOTAL	1,087	51	4.69%	198,319	24,289	12.25%
3.00 BAKERY GOODS - CANNED, FRESH, CANNED OR FROZEN						
3.01	117	6	5.13%	2,197	80	3.64%
3.02	0	0	0%	0	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.03	6	2	33.33%	206	25	12.14%
3.04	6	5	83.33%	81	60	74.07%
3.05	1	1	100.00%	5	5	100.00%
3.06	25	6	24.00%	5,204	180	3.46%
3.07	0	0	0%	0	0	0%
3.08	0	0	0%	0	0	0%
3.09	0	0	0%	0	0	0%
3.10	22	0	0%	10,162	0	0%
3.11	28	4	14.29%	3,040	128	4.21%
3.12	0	0	0%	0	0	0%
3.13	0	0	0%	0	0	0%
3.40	0	0	0%	0	0	0%
3.50	1,658	81	4.89%	162,216	3,708	2.29%
TOTAL	1,863	105	5.64%	183,111	4,186	2.29%

4.00 MEAT, FISH, POULTRY

4.01	8	0	0%	178	0	0%
4.02	5	2	40.00%	1,699	24	1.41%
4.03	13	12	92.31%	129	123	95.35%
4.04	0	0	0%	1,393	0	0%
4.05	0	0	0%	388	266	68.56%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	7	3	42.86%
4.08	0	0	0%	6	6	100.00%
4.09	0	0	0%	9,857	1,489	15.11%
4.10	0	0	0%	3,992	1,219	30.54%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	504	314	62.30%
4.13	0	0	0%	408	223	54.66%
4.14	0	0	0%	0	0	0%
4.40	0	0	0%	7	7	100.00%
4.50	0	0	0%	615,137	3,299	.54%
TOTAL	26	14	53.85%	633,705	6,973	1.10%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENT

5.01	0	0	0%	0	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	16	0	0%	577	0	0%
5.05	0	0	0%	0	0	0%
5.06	0	0	0%	0	0	0%
5.07	128	4	3.13%	19,724	609	3.09%
5.08	12	0	0%	761	0	0%
5.09	0	0	0%	0	0	0%
5.10	0	0	0%	0	0	0%
5.40	10	2	20.00%	59	4	6.78%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
TOTAL	166	6	3.61%	21,121	613	2.90%
6.00 FILLING PRODUCTS						
6.01	29	0	0%	3,095	0	0%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	27	27	100.00%
6.04	0	0	0%	0	0	0%
6.05	10	2	20.00%	320	8	2.50%
6.06	0	0	0%	9,595	170	1.77%
6.07	3	0	0%	355	0	0%
6.08	167	3	1.80%	25,445	50	.20%
6.09	0	0	0%	0	0	0%
6.40	1	1	100.00%	16	16	100.00%
TOTAL	210	6	2.86%	38,853	271	.70%

7.00 PRODUCE

7.01	76	12	15.79%	2,205	558	25.31%
7.02	27	1	3.70%	952	14	1.47%
7.03	0	0	0%	0	0	0%
7.04	154	14	9.09%	16,176	1,490	9.21%
7.05	0	0	0%	0	0	0%
7.06	0	0	0%	0	0	0%
7.40	5	0	0%	190	0	0%
7.50	292	12	4.11%	40,790	521	1.28%
TOTAL	554	39	7.04%	60,313	2,583	4.28%

8.00 OTHER FOOD PREPARATIONS

8.01	0	0	0%	0	0	0%
8.02	0	0	0%	0	0	0%
8.03	6	4	66.67%	145	76	52.41%
8.04	0	0	0%	0	0	0%
8.05	4	0	0%	89	0	0%
8.06	7	0	0%	235	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	9	1	11.11%	437	15	3.43%
8.10	0	0	0%	0	0	0%
8.11	0	0	0%	0	0	0%
8.12	0	0	0%	0	0	0%
8.40	33	0	0%	586	0	0%
TOTAL	59	5	8.47%	1,492	91	6.10%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>9.00 BEVERAGES</u>						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	83	0	0%	14,280	0	0%
9.06	6	1	16.67%	643	143	22.24%
9.07	20	0	0%	560	0	0%
9.08	0	0	0%	0	0	0%
9.09	0	0	0%	0	0	0%
9.10	13	0	0%	39,858	1	.002%
9.11	4	0	0%	55,365	0	0%
9.12	0	0	0%	0	0	0%
9.13	5	1	20.00%	1,344	144	10.71%
9.14	0	0	0%	0	0	0%
9.15	0	0	0%	0	0	0%
9.16	0	0	0%	0	0	0%
9.17	0	0	0%	0	0	0%
9.18	21	1	4.76%	2,766	234	8.46%
9.40	0	0	0%	0	0	0%
TOTAL	152	3	1.97%	114,816	522	.45%

10.00 PHARMACY PRODUCTS

10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	4	0	0%	260	0	0%
10.05	0	0	0%	0	0	0%
10.06	0	0	0%	0	0	0%
10.07	5	0	0%	610	0	0%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	1	0	0%	286	0	0%
10.11	76	6	7.89%	3,611	82	2.27%
10.12	11	4	36.36%	130	40	30.77%
10.13	3	1	33.33%	582	382	65.64%
10.14	12	0	0%	134	0	0%
10.15	1	1	100.00%	4	4	100.00%
10.16	0	0	0%	0	0	0%
10.17	7	0	0%	210	0	0%
10.18	0	0	0%	0	0	0%
10.19	3	0	0%	50	0	0%
10.40	0	0	0%	0	0	0%
TOTAL	123	12	9.76%	5,871	503	8.64%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>11.00 GARDEN, FARM, PET SUPPLIES</u>						
11.01	1	0	0%	62	0	0%
11.02	0	0	0%	0	0	0%
11.03	4	0	0%	120	0	0%
11.04	1	0	0%	300	0	0%
11.05	75	5	6.67%	27,148	8,780	32.34%
11.06	13	2	15.38%	615	28	4.55%
11.07	11	1	9.09%	804	9	1.12%
11.08	120	2	1.67%	6,716	21	.31%
11.09	83	9	10.84%	20,603	16,885	81.95%
11.10	53	0	0%	3,382	0	0%
11.11	128	9	7.03%	14,239	684	4.80%
11.12	54	3	.56%	14,275	412	2.89%
11.13	103	5	4.63%	7,100	1,435	20.21%
11.14	51	0	0%	9,887	0	0%
11.15	41	4	9.76%	6,408	104	1.62%
11.16	15	2	13.33%	1,163	48	4.13%
11.17	23	2	8.70%	2,349	325	13.84%
11.18	0	0	0%	0	0	0%
11.40	0	0	0%	0	0	0%
TOTAL	781	44	5.63%	115,161	28,731	24.95%

12.00 HARDWARE AND BUILDING MATERIALS

12.01	13	0	0%	170	0	0%
12.02	3	1	33.33%	96	29	30.21%
12.03	0	0	0%	0	0	0%
12.04	0	0	0%	0	0	0%
12.05	0	0	0%	0	0	0%
12.06	10	2	20.00%	1,203	298	24.77%
12.07	0	0	0%	0	0	0%
12.08	0	0	0%	0	0	0%
12.09	6	2	33.33%	1,058	116	10.96%
12.10	55	2	3.64%	5,072	86	1.70%
12.11	0	0	0%	0	0	0%
12.12	107	16	14.68%	35,286	22,743	64.45%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	0	0	0%	0	0	0%
12.16	0	0	0%	0	0	0%
12.17	8	1	12.50%	3,622	972	26.84%
12.18	0	0	0%	0	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	14	0	0%	860	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	18	2	11.11%	2,646	555	20.98%
TOTAL	236	26	11.02%	50,022	24,799	49.58%
13.00 PAINT AND ALLIED PRODUCTS						
13.01	278	3	1.08%	16,299	1,624	9.96%
13.02	17	0	0%	3,300	0	0%
13.03	0	0	0%	0	0	0%
13.04	0	0	0%	0	0	0%
13.05	30	0	0%	2,200	0	0%
13.06	0	0	0%	0	0	0%
13.07	0	0	0%	0	0	0%
13.08	25	2	8.00%	8,024	2,424	30.21%
13.09	83	2	2.41%	9,318	56	.60%
13.10	3	0	0%	629	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	0	0	0%	0	0	0%
13.14	0	0	0%	0	0	0%
13.15	0	0	0%	0	0	0%
13.40	26	0	0%	2,020	0	0%
TOTAL	462	7	1.52%	41,820	4,104	9.81%

14.00 MAINTENANCE SUPPLIES

14.01	3	0	0%	555	0	0%
14.02	0	0	0%	0	0	0%
14.03	18	0	0%	7,268	0	0%
14.04	0	0	0%	0	0	0%
14.05	2	0	0%	230	0	0%
14.06	63	1	1.59%	7,432	210	2.83%
14.07	27	0	0%	1,748	0	0%
14.08	0	0	0%	0	0	0%
14.09	4	0	0%	675	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	0	0	0%	0	0	0%
14.13	52	0	0%	7,215	0	0%
14.40	14	1	7.14%	3,516	900	25.60%
TOTAL	183	2	1.09%	28,639	1,110	3.88%

15.00 PAPER PRODUCTS

15.01	7	0	0%	651	0	0%
15.02	12	0	0%	1,200	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.03	0	0	0%	0	0	0%
15.04	0	0	0%	0	0	0%
15.05	0	0	0%	0	0	0%
15.06	24	2	8.33%	2,939	89	3.03%
15.07	1	0	0%	1,000	0	0%
15.08	36	2	66.67%	2,219	21	.95%
15.09	3	0	0%	52	0	0%
15.10	4	0	0%	277	0	0%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	45	2	4.44%	7,479	45	.60%
15.14	0	0	0%	0	0	0%
15.15	0	0	0%	0	0	0%
15.40	1	1	100.00%	205	205	100.00%
TOTAL	133	7	5.26%	16,022	360	2.25%

16.00 TEXTILE PRODUCTS

16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	24	0	0%	520	0	0%
16.06	0	0	0%	0	0	0%
16.07	0	0	0%	0	0	0%
16.08	0	0	0%	0	0	0%
16.09	0	0	0%	0	0	0%
16.10	185	5	3.24%	15,553	3,763	24.19%
16.11	0	0	0%	0	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	0	0	0%	0	0	0%
16.15	0	0	0%	0	0	0%
16.16	0	0	0%	0	0	0%
16.17	0	0	0%	0	0	0%
16.40	0	0	0%	0	0	0%
TOTAL	209	6	2.87%	16,073	3,763	23.41%

17.00 MISCELLANEOUS

17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	12	0	0%	150	0	0%
17.04	0	0	0%	0	0	0%
17.05	0	0	0%	0	0	0%
17.06	0	0	0%	0	0	0%
17.07	0	0	0%	0	0	0%
17.08	0	0	0%	0	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.09	0	0	0%	0	0	0%
17.10	19	2	10.53%	2,897	984	33.97%
17.11	4	0	0%	120	0	0%
17.12	0	0	0%	0	0	0%
17.13	0	0	0%	0	0	0%
17.14	0	0	0%	0	0	0%
17.15	10	3	30.00%	1,494	1,216	81.39%
17.16	8	0	0%	59	0	0%
17.17	32	12	37.50%	44,678	30,689	68.69%
17.18	6	0	0%	1,200	0	0%
17.19	12	0	0%	392	5	1.28%
17.20	0	0	0%	0	0	0%
17.21	0	0	0%	0	0	0%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	7	2	28.58%	5,292	293	5.54%
17.40	36	1	2.78%	3,128	88	2.81%
TOTAL	146	18	12.33%	59,410	33,275	56.01%
ALL CATEGORIES TOTAL	6,566	387	5.89%	1,683,427	147,610	8.77%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS AND FLAVORINGS						
1.01	2	0	0%	25	0	0%
1.02	231	18	7.79%	31,244	9,602	30.73%
1.03	16	2	12.50%	270	13	4.81%
1.04	1	1	100.00%	1,056	1,056	100.00%
1.05	0	0	0%	0	0	0%
1.06	608	24	3.95%	28,318	469	1.66%
1.07	63	0	0%	3,179	0	0%
1.08	117	10	8.55%	3,536	553	15.64%
1.09	0	0	0%	0	0	0%
1.10	0	0	0%	0	0	0%
1.11	21	1	4.76%	1,032	45	4.36%
1.12	17	3	17.65%	519	217	41.81%
1.13	140	3	2.14%	7,871	105	1.33%
1.14	59	4	6.78%	4,280	941	21.99%
1.15	2	1	50.00%	35	15	42.86%
1.16	0	0	0%	0	0	0%
1.40	29	6	20.69%	14,395	8,478	58.90%
TOTAL	1,304	73	5.60%	95,760	21,494	22.45%
2.00 DAIRY-TYPE PRODUCTS						
2.01	4	0	0%	150	0	0%
2.02	22	4	18.18%	2,369	533	22.50%
2.03	28	0	0%	1,376	0	0%
2.04	91	4	4.40%	37,266	24,085	64.63%
2.05	39	4	10.26%	409	67	16.38%
2.06	16	5	31.25%	1,373	28	2.04%
2.07	5	0	0%	628	0	0%
2.08	0	0	0%	0	0	0%
2.09	0	0	0%	0	0	0%
2.10	0	0	0%	0	0	0%
2.11	1	0	0%	222	0	0%
2.12	0	0	0%	0	0	0%
2.13	239	10	4.18%	30,113	1,402	4.66%
2.14	0	0	0%	0	0	0%
2.15	14	4	28.57%	10,262	45	.44%
2.16	18	1	5.56%	380	6	1.58%
2.17	26	0	0%	487	0	0%
2.40	0	0	0%	0	0	0%
2.50	674	52	7.72%	262,261	60,142	22.93%
TOTAL	1,177	84	7.14%	347,295	86,303	24.85%
3.00 BAKERY GOODS- FRESH, CANNED OR FROZEN						
3.01	445	21	4.72%	10,821	257	2.38%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	72	3	4.17%	4,789	89	1.86%
3.03	60	7	11.67%	12,681	151	1.19%
3.04	40	11	27.50%	1,690	706	41.78%
3.05	11	1	9.09%	434	39	8.99%
3.06	267	5	1.87%	4,205	383	9.11%
3.07	0	0	0%	0	0	0%
3.08	0	0	0%	0	0	0%
3.09	12	0	0%	180	0	0%
3.10	8	0	0%	42,800	0	0%
3.11	33	6	18.18%	7,472	255	3.41%
3.12	0	0	0%	0	0	0%
3.13	5	0	0%	300	0	0%
3.40	11	0	0%	132	0	0%
3.50	2,441	134	5.49%	103,765	6,247	6.02%
TOTAL	3,405	188	5.52%	189,273	8,127	4.29%

4.00 MEAT, FISH, POULTRY

4.01	140	0	0%	6,045	1	.02%
4.02	20	3	15.00%	425	26	6.12%
4.03	22	13	59.09%	209	105	50.24%
4.04	0	0	0%	931	0	0%
4.05	0	0	0%	2,127	138	6.49%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	630	480	76.19%
4.08	0	0	0%	7	7	100.00%
4.09	0	0	0%	3,388	409	12.07%
4.10	0	0	0%	8,305	1,205	14.51%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	1,215	287	23.62%
4.13	0	0	0%	63,743	2,644	4.15%
4.14	0	0	0%	207	2	.97%
4.40	0	0	0%	73	28	38.36%
4.50	0	0	0%	618,974	3,398	.55%
TOTAL	182	14	7.69%	706,285	8,730	1.24%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENTES

5.01	0	0	0%	0	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	0	0	0%	0	0	0%
5.05	0	0	0%	0	0	0%
5.06	0	0	0%	0	0	0%
5.07	17	0	0%	2,514	0	0%
5.08	3	0	0%	2,400	0	0%
5.09	1	0	0%	7,200	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	9	1	11.11%	853	12	1.41%
5.40	77	1	12.99%	16,207	14	.09%
TOTAL	107	2	1.87%	29,174	26	.09%
6.00 MILLING PRODUCTS						
6.01	58	3	5.17%	1,069	44	4.12%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	4,766	15	.31%
6.04	0	0	0%	0	0	0%
6.05	9	1	11.11%	419	11	2.63%
6.06	0	0	0%	1,590	132	8.30%
6.07	5	1	20.00%	101	31	30.69%
6.08	391	15	3.84%	52,836	1,425	2.70%
6.09	2	2	100.00%	37	37	100.00%
6.40	33	1	3.03%	599	19	3.17%
TOTAL	498	23	4.62%	61,517	1,714	2.79%

7.00 PRODUCE

7.01	213	18	8.45%	8,511	1,709	20.08%
7.02	54	7	12.96%	145,231	22,891	15.76%
7.03	33	0	0%	4,710	0	0%
7.04	194	19	9.79%	12,532	1,290	10.29%
7.05	7	2	28.57%	257	133	51.75%
7.06	0	0	0%	0	0	0%
7.40	17	4	23.53%	2,041	82	4.02%
7.50	512	18	3.52%	297,898	921	.31%
TOTAL	1,030	68	6.60%	471,180	27,026	5.74%

8.00 OTHER FOOD PREPARATIONS

8.01	24	3	12.50%	470	35	7.45%
8.02	0	0	0%	0	0	0%
8.03	34	7	20.59%	1,136	525	46.21%
8.04	5	0	0%	34	0	0%
8.05	4	0	0%	89	0	0%
8.06	7	0	0%	235	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	47	2	4.26%	67,273	8,664	12.88%
8.10	0	0	0%	0	0	0%
8.11	1	0	0%	49	0	0%
8.12	0	0	0%	0	0	0%
8.40	131	10	7.63%	12,526	8,214	65.58%
TOTAL	253	22	8.70%	81,812	17,438	21.31%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>9.00 BEVERAGES</u>						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	67	0	0%	22,600	0	0%
9.06	0	0	0%	0	0	0%
9.07	0	0	0%	0	0	0%
9.08	0	0	0%	0	0	0%
9.09	1	1	100.00%	120	120	100.00%
9.10	6	0	0%	35,172	23	.07%
9.11	6	0	0%	5,000	0	0%
9.12	0	0	0%	0	0	0%
9.13	0	0	0%	0	0	0%
9.14	0	0	0%	0	0	0%
9.15	0	0	0%	0	0	0%
9.16	0	0	0%	0	0	0%
9.17	1	0	0%	33	0	0%
9.18	8	0	0%	7,665	0	0%
9.40	0	0	0%	0	0	0%
TOTAL	89	1	1.12%	70,590	143	24.24%

10.00 PHARMACY PRODUCTS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
10.01	5	1	20.00%	5	1	20.00%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	3	0	0%	900	0	0%
10.05	0	0	0%	0	0	0%
10.06	4	0	0%	47	0	0%
10.07	12	2	16.67%	4,304	1,668	38.75%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	3	0	0%	54	0	0%
10.11	32	0	0%	6,600	0	0%
10.12	96	9	9.38%	37,733	4,933	13.07%
10.13	46	5	10.87%	13,255	855	6.45%
10.14	1	0	0%	300	0	0%
10.15	0	0	0%	0	0	0%
10.16	0	0	0%	0	0	0%
10.17	0	0	0%	0	0	0%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	11	1	9.09%	549	6	1.09%
TOTAL	213	18	8.45%	63,737	7,462	11.70%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>11.00 GARDEN, FARM, PET SUPPLIES</u>						
11.01	15	1	6.67%	2,472	34	1.38%
11.02	0	0	0%	0	0	0%
11.03	0	0	0%	0	0	0%
11.04	3	1	33.33%	30	7	23.33%
11.05	61	20	32.79%	60,131	16,826	27.98%
11.06	17	1	5.88%	773	32	4.14%
11.07	13	0	0%	174	0	0%
11.08	39	0	0%	4,710	0	0%
11.09	44	3	6.82%	1,072	38	3.54%
11.10	42	15	35.71%	2,167	757	34.93%
11.11	60	18	30.00%	4,387	671	15.30%
11.12	241	4	1.66%	26,361	49	.19%
11.13	115	0	0%	10,451	40	.38%
11.14	185	11	5.95%	19,884	1,393	7.01%
11.15	43	7	16.28%	13,670	844	6.17%
11.16	18	0	0%	5,250	0	0%
11.17	13	0	0%	178	0	0%
11.18	0	0	0%	0	0	0%
11.40	5	0	0%	56	0	0%
TOTAL	914	81	8.86%	151,766	20,691	13.63%

12.00 HARDWARE, AND BUILDING MATERIALS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.01	36	0	0%	23,917	0	0%
12.02	293	1	.52%	66,044	13	.02%
12.03	0	0	0%	0	0	0%
12.04	19	0	0%	3,412	0	0%
12.05	15	0	0%	133	0	0%
12.06	36	3	8.33%	3,272	176	5.38%
12.07	6	0	0%	724	0	0%
12.08	10	1	10.00%	1,400	109	7.79%
12.09	7	0	0%	1,776	0	0%
12.10	65	4	6.15%	5,364	146	2.72%
12.11	5	1	20.00%	132	30	22.73%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	0	0	0%	0	0	0%
12.16	17	0	0%	922	0	0%
12.17	2	2	100.00%	438	438	100.00%
12.18	4	0	0%	241	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	30	0	0%	745	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	47	1	2.13%	6,388	235	3.68%
TOTAL	490	13	2.65%	114,903	1,147	1.00%
13.00 PAINT AND ALLIED PRODUCTS						
13.01	298	1	.34%	16,010	1,260	7.87%
13.02	55	0	0%	2,500	0	0%
13.03	30	0	0%	1,500	0	0%
13.04	0	0	0%	0	0	0%
13.05	14	0	0%	1,001	1	.10%
13.06	12	0	0%	355	0	0%
13.07	0	0	0%	0	0	0%
13.08	6	0	0%	600	0	0%
13.09	88	1	1.14%	5,425	80	1.47%
13.10	0	0	0%	0	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	1	0	0%	25	0	0%
13.14	0	0	0%	0	0	0%
13.15	0	0	0%	0	0	0%
13.40	10	3	30.00%	4,414	3,402	77.07%
TOTAL	514	5	.97%	31,830	4,743	14.90%

14.00 MAINTENANCE SUPPLIES

14.01	24	0	0%	1,152	0	0%
14.02	0	0	0%	0	0	0%
14.03	248	11	4.44%	25,443	300	1.18%
14.04	212	1	.47%	79,030	41	.05%
14.05	1	0	0%	49	0	0%
14.06	84	5	5.95%	6,122	84	1.37%
14.07	25	0	0%	4,409	0	0%
14.08	15	0	0%	181	0	0%
14.09	133	0	0%	26,163	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	11	2	18.18%	621	51	8.21%
14.13	0	0	0%	0	0	0%
14.40	92	4	4.04%	19,336	2,016	10.43%
TOTAL	852	23	2.70%	162,506	2,492	1.53%

15.00 PAPER PRODUCTS

15.01	1	0	0%	47	0	0%
15.02	10	1	10.00%	4,300	400	9.30%
15.03	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	0	0	0%	0	0	0%
15.05	0	0	0%	0	0	0%
15.06	17	3	17.65%	7,376	3,800	51.52%
15.07	1	0	0%	1,000	0	0%
15.08	0	0	0%	0	0	0%
15.09	0	0	0%	0	0	0%
15.10	18	1	5.56%	506	143	28.26%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	126	5	3.97%	4,260	24	.56%
15.14	1	0	0%	5	0	0%
15.15	0	0	0%	0	0	0%
15.40	20	0	0%	660	0	0%
TOTAL	194	10	5.15%	18,164	4,367	24.04%

16.00 TEXTILE PRODUCTS

16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	28	0	0%	4,153	0	.0%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	12	1	8.33%	603	11	1.82%
16.08	148	0	0%	36,512	0	0%
16.09	42	0	0%	7,104	0	0%
16.10	154	9	5.84%	16,456	2,795	16.98%
16.11	0	0	0%	0	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	25	3	12.00%	4,754	241	5.07%
16.15	0	0	0%	0	0	0%
16.16	8	0	0%	151	0	0%
16.17	0	0	0%	0	0	0%
16.40	0	0	0%	0	0	0%
TOTAL	417	13	3.12%	69,733	3,047	4.37%

17.00 MISCELLANEOUS

17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	16	0	0%	450	0	0%
17.04	0	0	0%	0	0	0%
17.05	37	0	0%	800	0	0%
17.06	2	1	50.00%	28	12	42.86%
17.07	1	1	100.00%	2	2	100.00%
17.08	0	0	0%	0	0	0%
17.09	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.10	49	0	0%	4,056	0	0%
17.11	3	0	0%	299	0	0%
17.12	0	0	0%	0	0	0%
17.13	12	0	0%	2,537	0	0%
17.14	0	0	0%	0	0	0%
17.15	0	0	0%	0	0	0%
17.16	3	0	0%	16,576	2	.01%
17.17	70	11	15.71%	93,229	63,258	67.85%
17.18	4	2	50.00%	212	102	48.11%
17.19	16	2	12.50%	1,585	84	5.30%
17.20	8	0	0%	270	0	0%
17.21	17	6	35.29%	25,967	25,169	96.93%
17.22	2	1	50.00%	224	112	50.00%
17.23	0	0	0%	0	0	0%
17.24	31	2	6.45%	7,251	455	6.27%
17.40	14	0	0%	1,265	0	0%
TOTAL	285	26	9.12%	154,745	89,196	57.64%
ALL CATEGORIES						
TOTAL	11,924	664	5.57%	2,820,236	304,151	10.78%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS AND FLAVORINGS						
1.01	11	1	9.09%	194	24	12.37%
1.02	3	0	0%	85	0	0%
1.03	1	0	0%	295	37	12.54%
1.04	2	0	0%	34	0	0%
1.05	0	0	0%	0	0	0%
1.06	429	11	2.56%	42,153	2,888	6.85%
1.07	7	0	0%	302	0	0%
1.08	127	9	7.09%	9,848	347	3.52%
1.09	6	0	0%	1,450	0	0%
1.10	0	0	0%	0	0	0%
1.11	1	1	100.00%	12	12	100.00%
1.12	0	0	0%	0	0	0%
1.13	53	4	7.55%	310,236	111	.04%
1.14	42	0	0%	1,701	0	0%
1.15	1	1	100.00%	41	41	100.00%
1.16	0	0	0%	0	0	0%
1.40	34	8	23.53%	2,355	114	4.84%
TOTAL	717	35	4.88%	368,706	3,574	.97%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	33	3	9.09%	910	156	17.14%
2.03	60	0	0%	1,879	0	0%
2.04	48	0	0%	9,109	0	0%
2.05	85	3	3.53%	1,912	25	13.01%
2.06	6	0	0%	1,832	0	0%
2.07	13	1	7.69%	1,671	32	1.92%
2.08	0	0	0%	0	0	0%
2.09	2	0	0%	174	0	0%
2.10	0	0	0%	0	0	0%
2.11	2	0	0%	370	0	0%
2.12	4	0	0%	32	0	0%
2.13	197	8	4.06%	49,528	4,623	9.33%
2.14	0	0	0%	0	0	0%
2.15	2	1	50.00%	23	8	34.78%
2.16	7	0	0%	219	0	0%
2.17	2	0	0%	92	0	0%
2.40	1	1	100.00%	7	7	100.00%
2.50	475	30	6.32%	368,857	117,705	31.91%
TOTAL	937	47	5.02%	436,615	122,556	28.07%
3.00 BAKERY GOODS - FRESH, CANNED OR FROZEN						
3.01	168	4	2.38%	3,117	478	15.34%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	1	0	0%	120	0	0%
3.03	80	12	15.00%	1,491	261	17.51%
3.04	0	0	0%	0	0	0%
3.05	0	0	0%	0	0	0%
3.06	107	16	14.95%	30,903	760	2.46%
3.07	0	0	0%	0	0	0%
3.08	56	0	0%	2,134	0	0%
3.09	3	0	0%	467	0	0%
3.10	0	0	0%	0	0	0%
3.11	41	0	0%	7,274	0	0%
3.12	5	0	0%	68	0	0%
3.13	0	0	0%	0	0	0%
3.40	0	0	0%	0	0	0%
3.50	1,349	70	5.19%	114,027	4,956	4.35%
TOTAL	1,810	102	5.64%	159,601	6,455	4.04%

4.00 MEAT, FISH, POULTRY

4.01	112	3	2.68%	7,217	97	1.34%
4.02	63	25	39.68%	3,250	926	28.49%
4.03	17	15	88.24%	220	168	76.36%
4.04	0	0	0%	1,945	196	10.03%
4.05	0	0	0%	1,533	121	7.89%
4.06	0	0	0%	13	13	100.00%
4.07	0	0	0%	882	737	83.56%
4.08	0	0	0%	0	0	0%
4.09	0	0	0%	2,805	14	.50%
4.10	0	0	0%	11,026	1,178	10.68%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	805	426	52.92%
4.13	0	0	0%	51,331	1,332	2.59%
4.14	0	0	0%	23	0	0%
4.40	0	0	0%	517	48	9.28%
4.50	0	0	0%	648,351	3,815	.59%
TOTAL	192	43	22.40%	729,918	9,071	1.24%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENTS

5.01	0	0	0%	0	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	6	0	0%	1,400	0	0%
5.05	0	0	0%	0	0	0%
5.06	0	0	0%	0	0	0%
5.07	38	0	0%	3,475	1	.03%
5.08	9	0	0%	2,229	1	.04%
5.09	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	8	0	0%	1,084	0	0%
5.40	134	4	2.99%	16,412	40	.24%
TOTAL	195	4	2.05%	24,600	42	.17%
6.00 MILLING PRODUCTS						
6.01	44	0	0%	4,090	0	0%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	0	0	0%
6.04	0	0	0%	0	0	0%
6.05	39	1	2.56%	1,490	19	1.28%
6.06	0	0	0%	11,548	24	.21%
6.07	0	0	0%	928	28	3.02%
6.08	210	3	1.43%	28,380	45	.16%
6.09	3	0	0%	91	0	0%
6.40	6	2	33.33%	77	27	35.06%
TOTAL	302	6	1.99%	46,604	143	.31%

7.00 PRODUCE

7.01	124	23	18.55%	12,851	931	7.24%
7.02	18	4	22.22%	708	110	15.54%
7.03	90	0	0%	3,241	44	1.36%
7.04	128	12	9.38%	6,867	1,497	21.80%
7.05	0	0	0%	0	0	0%
7.06	0	0	0%	0	0	0%
7.40	13	0	0%	402	0	0%
7.50	395	6	1.52%	120,041	111	.09%
TOTAL	768	45	5.86%	144,110	2,693	1.87%

8.00 OTHER FOOD PREPARATIONS

8.01	54	1	1.85%	15,986	11	.07%
8.02	6	0	0%	2,200	0	0%
8.03	3	0	0%	200	0	0%
8.04	12	0	0%	2,550	0	0%
8.05	10	0	0%	4,100	0	0%
8.06	12	0	0%	248	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	23	10	43.48%	50,670	26,543	52.38%
8.10	1	0	0%	23	0	0%
8.11	16	0	0%	2,850	0	0%
8.12	0	0	0%	0	0	0%
8.40	368	30	8.15%	8,933	46	.51%
TOTAL	505	41	8.12%	87,810	26,600	30.29%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<b>9.00 BEVERAGES</b>						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	2	0	0%	100	0	0%
9.04	0	0	0%	0	0	0%
9.05	70	0	0%	40,328	0	0%
9.06	0	0	0%	0	0	0%
9.07	0	0	0%	0	0	0%
9.08	0	0	0%	0	0	0%
9.09	40	0	0%	5,850	0	0%
9.10	12	0	0%	241	0	0%
9.11	22	0	0%	10,007	0	0%
9.12	0	0	0%	0	0	0%
9.13	4	0	0%	299	0	0%
9.14	0	0	0%	0	0	0%
9.15	0	0	0%	0	0	0%
9.16	0	0	0%	0	0	0%
9.17	0	0	0%	0	0	0%
9.18	26	0	0%	6,100	0	0%
9.40	0	0	0%	0	0	0%
<b>TOTAL</b>	<b>176</b>	<b>0</b>	<b>0%</b>	<b>62,925</b>	<b>0</b>	<b>0%</b>

**10.00 PHARMACY PRODUCTS**

10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	0	0	0%	0	0	0%
10.05	0	0	0%	0	0	0%
10.06	2	0	0%	48	0	0%
10.07	5	0	0%	3,460	0	0%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	16	0	0%	2,400	0	0%
10.12	116	9	7.76%	34,410	4,833	14.05%
10.13	68	26	38.24%	8,533	2,467	28.91%
10.14	0	0	0%	0	0	0%
10.15	1	0	0%	564	0	0%
10.16	0	0	0%	0	0	0%
10.17	16	0	0%	206	0	0%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	0	0	0%	0	0	0%
<b>TOTAL</b>	<b>224</b>	<b>35</b>	<b>15.63%</b>	<b>49,621</b>	<b>7,300</b>	<b>14.71%</b>

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<b>11.00 GARDEN, FARM, PET SUPPLIES</b>						
11.01	7	0	0%	850	0	0%
11.02	3	0	0%	273	0	0%
11.03	1	0	0%	7,360	0	0%
11.04	3	0	0%	302	0	0%
11.05	36	2	5.56%	27,383	18,240	66.61%
11.06	8	2	25.00%	3,979	34	.85%
11.07	25	8	32.00%	6,588	1,935	29.37%
11.08	22	5	22.73%	5,162	1,468	28.44%
11.09	8	0	0%	1,647	0	0%
11.10	29	9	31.03%	935	349	37.33%
11.11	34	1	2.94%	4,671	120	2.57%
11.12	48	1	2.08%	6,905	17	.25%
11.13	31	0	0%	22,139	0	0%
11.14	69	2	2.90%	13,002	364	2.80%
11.15	0	0	0%	0	0	0%
11.16	5	0	0%	41	0	0%
11.17	50	10	20.00%	7,754	4,142	53.41%
11.18	0	0	0%	0	0	0%
11.40	10	0	0%	315	0	0%
<b>TOTAL</b>	<b>389</b>	<b>40</b>	<b>10.28%</b>	<b>109,306</b>	<b>26,669</b>	<b>24.40%</b>

**12.00 HARDWARE, AND BUILDING MATERIALS**

12.01	0	0	0%	0	0	0%
12.02	4	0	0%	140	0	0%
12.03	7	3	42.86%	78	15	19.23%
12.04	0	0	0%	0	0	0%
12.05	6	0	0%	277	0	0%
12.06	0	0	0%	0	0	0%
12.07	46	2	4.35%	973	20	2.06%
12.08	32	2	6.25%	1,611	57	3.54%
12.09	4	1	25.00%	460	10	2.17%
12.10	7	0	0%	744	0	0%
12.11	0	0	0%	0	0	0%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	0	0	0%	0	0	0%
12.16	0	0	0%	0	0	0%
12.17	10	5	50.00%	859	268	31.20%
12.18	0	0	0%	0	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	81	8	9.88%	5,068	853	16.83%
TOTAL	197	21	10.66%	10,210	1,223	11.98%
13.00 PAINT AND ALLIED PRODUCTS						
13.01	134	13	9.70%	10,164	1,134	11.16%
13.02	37	2	5.41%	3,110	160	5.14%
13.03	0	0	0%	0	0	0%
13.04	5	0	0%	250	0	0%
13.05	12	0	0%	1,200	0	0%
13.06	0	0	0%	0	0	0%
13.07	0	0	0%	0	0	0%
13.08	4	0	0%	225	0	0%
13.09	6	2	33.33%	5,988	2,340	39.08%
13.10	15	2	13.33%	616	16	2.60%
13.11	7	0	0%	121	0	0%
13.12	0	0	0%	0	0	0%
13.13	12	0	0%	3,201	0	0%
13.14	0	0	0%	0	0	0%
13.15	2	2	100.00%	100	100	100.00%
13.40	16	4	25.00%	3,094	1,776	57.40%
TOTAL	250	25	10.00%	28,069	5,526	19.69%

14.00 MAINTENANCE SUPPLIES

14.01	12	0	0%	965	0	0%
14.02	0	0	0%	0	0	0%
14.03	34	11	32.35%	1,183	288	24.34%
14.04	25	1	4.00%	752	32	4.26%
14.05	39	2	5.13%	1,199	40	3.34%
14.06	46	1	2.17%	6,209	6	.10%
14.07	1	1	100.00%	122	122	100.00%
14.08	34	0	0%	769	0	0%
14.09	96	0	0%	25,608	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	8	0	0%	784	0	0%
14.13	0	0	0%	0	0	0%
14.40	66	5	7.58%	5,424	87	1.60%
TOTAL	361	21	5.82%	43,015	575	1.34%

15.00 PAPER PRODUCTS

15.01	0	0	0%	0	0	0%
15.02	31	1	3.23%	5,940	70	1.18%
15.03	15	1	6.67%	1,547	27	1.75%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	0	0	0%	0	0	0%
15.05	1	0	0%	12	0	0%
15.06	18	2	11.11%	1,812	718	39.62%
15.07	0	0	0%	0	0	0%
15.08	0	0	0%	0	0	0%
15.09	0	0	0%	0	0	0%
15.10	3	0	0%	253	1	.40%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	24	3	12.50%	3,193	1,175	36.80%
15.14	0	0	0%	0	0	0%
15.15	1	0	0%	3	0	0%
15.40	14	1	7.14%	1,081	16	1.48%
TOTAL	107	8	7.48%	13,841	2,007	14.50%

16.00 TEXTILE PRODUCTS

16.01	1	1	100.00%	29	29	100.00%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	11	1	9.09%	512	10	1.95%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	10	2	20.00%	131	36	27.48%
16.08	274	0	0%	51,612	0	0%
16.09	25	1	4.00%	6,432	30	.47%
16.10	75	1	1.33%	1,123	12	1.07%
16.11	0	0	0%	0	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	5	2	40.00%	1,913	789	41.24%
16.15	0	0	0%	0	0	0%
16.16	12	0	0%	30	0	0%
16.17	0	0	0%	0	0	0%
16.40	16	0	0%	108	0	0%
TOTAL	429	8	1.86%	61,890	906	1.46%

17.00 MISCELLANEOUS

17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	42	0	0%	1,800	0	0%
17.04	0	0	0%	0	0	0%
17.05	20	0	0%	388	0	0%
17.06	0	0	0%	0	0	0%
17.07	0	0	0%	0	0	0%
17.08	1	0	0%	3	0	0%
17.09	2	2	100.00%	290	290	100.00%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.10	4	1	25.00%	593	43	7.25%
17.11	19	4	21.05%	2,613	978	37.43%
17.12	11	7	63.64%	659	347	52.66%
17.13	0	0	0%	0	0	0%
17.14	0	0	0%	0	0	0%
17.15	5	0	0%	400	0	0%
17.16	11	1	9.09%	87	4	4.60%
17.17	9	0	0%	5,966	0	0%
17.18	0	0	0%	0	0	0%
17.19	0	0	0%	0	0	0%
17.20	0	0	0%	0	0	0%
17.21	5	2	40.00%	7,080	6,588	93.05%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	28	4	14.29%	5,284	269	5.09%
17.40	13	3	23.08%	1,487	1,477	99.33%
TOTAL	170	24	14.12%	26,650	9,996	37.51%
ALL CATEGORIES TOTAL	7,729	505	6.53%	2,403,491	225,336	9.38%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS AND FLAVORINGS						
1.01	15	0	0%	1,007	0	0%
1.02	99	0	0%	9,307	0	0%
1.03	46	9	19.57%	12,408	143	1.15%
1.04	0	0	0%	0	0	0%
1.05	4	0	0%	555	0	0%
1.06	226	13	5.75%	27,350	1,375	5.03%
1.07	13	5	38.46%	590	185	31.36%
1.08	164	4	2.44%	41,524	95	.23%
1.09	4	0	0%	83	0	0%
1.10	0	0	0%	0	0	0%
1.11	4	0	0%	194	0	0%
1.12	24	0	0%	2,252	0	0%
1.13	34	3	8.82%	23,410	151	.65%
1.14	108	3	2.78%	10,785	606	5.61%
1.15	4	0	0%	67	0	0%
1.16	0	0	0%	0	0	0%
1.40	30	1	3.33%	2,118	14	.66%
TOTAL	775	38	4.90%	137,650	2,569	1.87%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	146	17	11.64%	7,676	411	5.35%
2.03	193	37	19.17%	9,706	2,747	28.30%
2.04	30	1	3.33%	974	8	.82%
2.05	87	27	31.03%	23,140	857	3.70%
2.06	1	0	0%	66	0	0%
2.07	26	1	3.85%	387	23	5.94%
2.08	0	0	0%	0	0	0%
2.09	0	0	0%	0	0	0%
2.10	0	0	0%	0	0	0%
2.11	7	0	0%	700	0	0%
2.12	0	0	0%	0	0	0%
2.13	452	17	3.76%	57,945	4,599	7.94%
2.14	12	2	16.67%	2,967	838	28.24%
2.15	0	0	0%	0	0	0%
2.16	20	0	0%	1,000	0	0%
2.17	18	0	0%	373	0	0%
2.40	0	0	0%	0	0	0%
2.50	833	48	5.76%	194,661	8,329	4.28%
TOTAL	1,825	150	8.22%	299,595	17,812	5.95%
3.00 BAKERY GOODS - FRESH, CANNED OR FROZEN						
3.01	422	27	6.40%	19,711	1,140	5.78%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	10	0	0%	500	0	0%
3.03	3	1	33.33%	322	250	77.64%
3.04	7	4	57.14%	146	76	52.05%
3.05	0	0	0%	0	0	0%
3.06	94	11	11.70%	91,378	2,318	2.54%
3.07	0	0	0%	0	0	0%
3.08	28	0	0%	99,137	0	0%
3.09	0	0	0%	0	0	0%
3.10	64	3	4.69%	132,758	3,390	2.55%
3.11	96	6	6.25%	9,395	335	3.57%
3.12	1	0	0%	79	0	0%
3.13	0	0	0%	0	0	0%
3.40	5	0	0%	3,796	0	0%
3.50	1,482	97	6.55%	108,551	12,826	11.82%
TOTAL	2,212	149	6.74%	465,775	20,335	4.37%

4.00 MEAT, FISH, POULTRY

4.01	46	1	2.17%	11,155	30	.27%
4.02	16	1	6.25%	1,589	19	1.20%
4.03	15	11	73.33%	98	53	54.08%
4.04	0	0	0%	1,027	30	2.92%
4.05	0	0	0%	6,972	697	9.85%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	0	0	0%
4.08	0	0	0%	18	15	83.33%
4.09	0	0	0%	4,942	249	5.04%
4.10	0	0	0%	28,140	2,055	7.30%
4.11	0	0	0%	40	0	0%
4.12	0	0	0%	1,165	688	59.06%
4.13	0	0	0%	1,999	15	.75%
4.14	0	0	0%	0	0	0%
4.40	0	0	0%	80	0	0%
4.50	0	0	0%	544,942	3,123	.57%
TOTAL	77	13	16.88%	602,167	6,964	1.16%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENTS

5.01	0	0	0%	0	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	9	0	0%	1,000	0	0%
5.05	1	0	0%	156	0	0%
5.06	0	0	0%	0	0	0%
5.07	11	1	9.09%	1,326	12	.90%
5.08	0	0	0%	0	0	0%
5.09	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	7	0	0%	695	0	0%
5.40	45	0	0%	8,712	0	0%
TOTAL	73	1	1.37%	11,889	12	.10%
6.00 MILLING PRODUCTS						
6.01	53	2	3.77%	1,785	106	5.94%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	0	0	0%
6.04	0	0	0%	0	0	0%
6.05	10	0	0%	2,653	0	0%
6.06	0	0	0%	18,540	307	1.66%
6.07	17	0	0%	341	0	0%
6.08	174	4	2.30%	18,836	72	.38%
6.09	11	0	0%	366	0	0%
6.40	37	1	2.70%	3,901	12	.31%
TOTAL	302	7	2.32%	46,422	497	1.07%

7.00 PRODUCE

7.01	181	17	9.39%	34,670	4,443	12.82%
7.02	9	0	0%	21,747	0	0%
7.03	137	0	0%	24,475	0	0%
7.04	241	20	8.30%	15,673	683	4.36%
7.05	0	0	0%	0	0	0%
7.06	29	1	3.45%	1,329	17	1.28%
7.40	0	0	0%	0	0	0%
7.50	614	8	1.30%	57,528	1,269	2.21%
TOTAL	1,211	46	3.80%	155,422	6,412	4.13%

8.00 OTHER FOOD PREPARATIONS

8.01	27	0	0%	4,852	0	0%
8.02	0	0	0%	0	0	0%
8.03	10	0	0%	1,497	0	0%
8.04	64	1	1.56%	8,918	948	10.63%
8.05	0	0	0%	0	0	0%
8.06	0	0	0%	0	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	30	3	10.00%	8,074	110	1.36%
8.10	5	0	0%	31	0	0%
8.11	1	0	0%	150	0	0%
8.12	3	0	0%	139	0	0%
8.40	34	1	2.94%	2,153	5	.23%
TOTAL	174	5	2.87%	29,834	1,063	4.11%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>9.00 BEVERAGES</u>						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	51	1	1.96%	13,547	71	.52%
9.06	0	0	0%	0	0	0%
9.07	12	0	0%	3,500	0	0%
9.08	0	0	0%	0	0	0%
9.09	18	0	0%	5,000	0	0%
9.10	51	0	0%	4,248	0	0%
9.11	41	6	14.63%	5,739	2,881	50.20%
9.12	0	0	0%	0	0	0%
9.13	10	0	0%	772	0	0%
9.14	2	0	0%	24	0	0%
9.15	12	0	0%	250	0	0%
9.16	0	0	0%	0	0	0%
9.17	0	0	0%	0	0	0%
9.18	34	0	0%	3,875	0	0%
9.40	1	0	0%	138	0	0%
TOTAL	232	7	3.02%	37,093	2,952	7.96%

10.00 PHARMACY PRODUCTS

10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	0	0	0%	0	0	0%
10.05	7	0	0%	1,302	0	0%
10.06	0	0	0%	0	0	0%
10.07	19	0	0%	3,500	0	0%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	12	0	0%	2,000	0	0%
10.12	137	14	10.22%	45,916	21,933	47.77%
10.13	64	22	34.38%	8,905	2,978	33.44%
10.14	5	0	0%	77	0	0%
10.15	2	0	0%	42	0	0%
10.16	0	0	0%	0	0	0%
10.17	5	0	0%	68	0	0%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	0	0	0%	0	0	0%
TOTAL	251	36	14.34%	61,811	24,911	40.30%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>11.00 GARDEN, FARM, PET SUPPLIES</u>						
11.01	2	0	0%	14	0	0%
11.02	3	0	0%	270	0	0%
11.03	0	0	0%	0	0	0%
11.04	5	4	80.00%	284	214	75.35%
11.05	5	0	0%	90	0	0%
11.06	0	0	0%	0	0	0%
11.07	6	0	0%	145	0	0%
11.08	32	1	3.13%	1,764	11	.62%
11.09	75	5	6.67%	3,754	181	4.82%
11.10	0	0	0%	0	0	0%
11.11	90	14	15.56%	8,601	1,341	15.59%
11.12	94	1	1.06%	7,316	8	.11%
11.13	40	0	0%	1,070	0	0%
11.14	48	0	0%	4,508	0	0%
11.15	49	2	4.08%	8,602	23	.27%
11.16	43	1	2.33%	10,017	88	.88%
11.17	35	3	8.57%	1,517	494	32.56%
11.18	0	0	0%	0	0	0%
11.40	4	1	25.00%	315	15	4.76%
TOTAL	531	32	6.03%	48,267	2,375	4.92%

12.00 HARDWARE, AND BUILDING MATERIALS

12.01	188	4	2.13%	34,363	53	.15%
12.02	3	0	0%	450	0	0%
12.03	0	0	0%	0	0	0%
12.04	0	0	0%	0	0	0%
12.05	37	0	0%	10,356	0	0%
12.06	10	0	0%	1,360	0	0%
12.07	59	14	23.73%	22,940	17,325	75.52%
12.08	0	0	0%	0	0	0%
12.09	0	0	0%	0	0	0%
12.10	35	4	11.43%	5,431	1,417	26.09%
12.11	0	0	0%	0	0	0%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	1	1	100.00%	312	312	100.00%
12.16	0	0	0%	0	0	0%
12.17	6	6	100.00%	762	762	100.00%
12.18	3	0	0%	115	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	6	0	0%	596	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	19	0	0%	298	0	0%
TOTAL	367	29	7.90%	76,983	19,869	25.81%
<u>13.00 PAINT AND ALLIED PRODUCTS</u>						
13.01	84	0	0%	10,260	0	0%
13.02	43	1	2.33%	2,244	4	.18%
13.03	0	0	0%	0	0	0%
13.04	12	1	8.33%	1,639	789	48.14%
13.05	0	0	0%	0	0	0%
13.06	0	0	0%	0	0	0%
13.07	0	0	0%	0	0	0%
13.08	6	0	0%	180	0	0%
13.09	36	0	0%	4,845	0	0%
13.10	5	0	0%	750	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	0	0	0%	0	0	0%
13.14	0	0	0%	0	0	0%
13.15	5	2	40.00%	41	17	41.46%
13.40	13	0	0%	708	0	0%
TOTAL	204	4	1.96%	20,667	810	3.92%
<u>14.00 MAINTENANCE SUPPLIES</u>						
14.01	6	0	0%	770	0	0%
14.02	0	0	0%	0	0	0%
14.03	66	2	3.03%	15,201	50	.33%
14.04	44	3	6.82%	854	46	5.39%
14.05	11	3	27.27%	953	19	1.99%
14.06	76	3	3.95%	10,591	1,343	12.68%
14.07	9	0	0%	684	0	0%
14.08	13	0	0%	165	0	0%
14.09	62	0	0%	14,106	0	0%
14.10	2	0	0%	175	0	0%
14.11	0	0	0%	0	0	0%
14.12	40	3	7.50%	1,178	19	1.61%
14.13	25	2	8.00%	5,719	800	13.99%
14.40	42	4	9.53%	6,295	52	.83%
TOTAL	360	20	5.56%	56,691	2,329	4.11%
<u>15.00 PAPER PRODUCTS</u>						
15.01	0	0	0%	0	0	0%
15.02	32	5	15.63%	2,759	289	10.47%
15.03	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	11	0	0%	1,182	0	0%
15.05	0	0	0%	0	0	0%
15.06	6	0	0%	1,676	0	0%
15.07	0	0	0%	0	0	0%
15.08	16	0	0%	588	0	0%
15.09	0	0	0%	0	0	0%
15.10	5	0	0%	511	0	0%
15.11	0	0	0%	0	0	0%
15.12	42	0	0%	3,920	0	0%
15.13	53	2	3.77%	20,375	1,103	5.41%
15.14	0	0	0%	0	0	0%
15.15	0	0	0%	0	0	0%
15.40	1	1	100.00%	48	48	100.00%
TOTAL	166	8	4.82%	31,059	1,440	4.64%
<u>16.00 TEXTILE PRODUCTS</u>						
16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	0	0	0%	0	0	0%
16.08	96	0	0%	16,410	0	0%
16.09	8	0	0%	801	0	0%
16.10	218	14	6.42%	32,177	253	.79%
16.11	0	0	0%	0	0	0%
16.12	6	0	0%	204	0	0%
16.13	0	0	0%	0	0	0%
16.14	0	0	0%	0	0	0%
16.15	1	0	0%	14	0	0%
16.16	0	0	0%	0	0	0%
16.17	5	4	80.00%	5	4	80.00%
16.40	1	0	0%	26	0	0%
TOTAL	335	18	5.37%	49,637	257	.52%
<u>17.00 MISCELLANEOUS</u>						
17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	12	0	0%	180	0	0%
17.04	3	0	0%	513	0	0%
17.05	12	0	0%	781	0	0%
17.06	0	0	0%	0	0	0%
17.07	0	0	0%	0	0	0%
17.08	0	0	0%	0	0	0%
17.09	1	0	0%	822	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.10	115	25	21.74%	16,518	1,473	8.92%
17.11	7	1	14.29%	284	76	26.76%
17.12	0	0	0%	0	0	0%
17.13	0	0	0%	0	0	0%
17.14	1	1	100.00%	16	16	100.00%
17.15	3	3	100.00%	13	13	100.00%
17.16	1	0	0%	19	0	0%
17.17	8	3	37.50%	5,785	535	9.25%
17.18	2	0	0%	500	0	0%
17.19	0	0	0%	0	0	0%
17.20	0	0	0%	0	0	0%
17.21	6	0	0%	12,160	0	0%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	54	0	0%	2,884	0	0%
17.40	2	1	50.00%	4,757	3	.06%
TOTAL	227	34	14.98%	45,232	2,116	4.68%
ALL CATEGORIES TOTAL	9,322	597	6.40%	2,172,194	112,723	5.19%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS AND FLAVORINGS						
1.01	12	0	0%	3,201	0	0%
1.02	88	1	1.14%	33,222	18	.05%
1.03	37	1	2.70%	17,000	51	.30%
1.04	3	0	0%	55	0	0%
1.05	0	0	0%	0	0	0%
1.06	444	34	7.66%	30,978	7,149	23.08%
1.07	21	6	28.57%	1,361	189	13.89%
1.08	25	0	0%	33,018	15	.05%
1.09	21	0	0%	1,953	0	0%
1.10	25	1	4.00%	682	10	1.47%
1.11	8	1	12.50%	1,814	21	1.16%
1.12	30	0	0%	3,934	0	0%
1.13	80	4	5.00%	20,826	4,745	22.78%
1.14	137	1	.73%	3,167	10	.32%
1.15	0	0	0%	0	0	0%
1.16	0	0	0%	0	0	0%
1.40	18	0	0%	3,332	1	.03%
TOTAL	949	49	5.16%	154,543	12,209	7.90%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	126	16	12.70%	14,616	579	3.95%
2.03	201	22	10.95%	52,817	34,075	64.52%
2.04	130	8	6.15%	4,106	147	3.58%
2.05	92	13	14.13%	3,260	288	8.83%
2.06	0	0	0%	0	0	0%
2.07	20	1	5.00%	1,747	1,233	70.58%
2.08	0	0	0%	0	0	0%
2.09	0	0	0%	0	0	0%
2.10	3	0	0%	32	0	0%
2.11	13	0	0%	3,887	0	0%
2.12	3	0	0%	5,000	0	0%
2.13	269	15	5.58%	86,057	35,595	41.36%
2.14	16	1	6.25%	4,002	639	15.97%
2.15	1	1	100.00%	18	18	100.00%
2.16	0	0	0%	0	0	0%
2.17	13	0	0%	130	0	0%
2.40	0	0	0%	0	0	0%
2.50	551	12	2.18%	157,860	2,071	1.31%
TOTAL	1,438	89	6.19%	333,532	74,645	22.38%
3.00 BAKERY GOODS - FRESH, CANNED OR FROZEN						
3.01	311	16	5.14%	14,575	145	.99%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	0	0	0%	0	0	0%
3.03	2	2	100.00%	1,523	1,523	100.00%
3.04	1	1	100.00%	16	16	100.00%
3.05	1	1	100.00%	3	3	100.00%
3.06	67	15	22.39%	4,717	971	20.59%
3.07	0	0	0%	0	0	0%
3.08	51	0	0%	26,549	0	0%
3.09	4	0	0%	79	0	0%
3.10	64	2	3.13%	42,589	16	.04%
3.11	72	3	4.17%	10,272	417	4.05%
3.12	0	0	0%	0	0	0%
3.13	0	0	0%	0	0	0%
3.40	18	0	0%	255	0	0%
3.50	1,529	82	5.36%	93,452	1,302	1.39%
TOTAL	2,120	122	5.75%	194,030	4,393	2.26%

4.00 MEAT, FISH, POULTRY

4.01	176	0	0%	18,445	6	.03%
4.02	60	4	6.67%	2,447	77	3.15%
4.03	82	2	2.44%	20,278	13	.06%
4.04	0	0	0%	2,174	151	6.95%
4.05	0	0	0%	9,741	90	.92%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	123	22	17.89%
4.08	0	0	0%	15	15	100.00%
4.09	0	0	0%	5,345	125	2.34%
4.10	0	0	0%	22,102	2,227	10.08%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	778	453	58.23%
4.13	0	0	0%	0	0	0%
4.14	0	0	0%	295	0	0%
4.40	0	0	0%	7,158	52	.73%
4.50	0	0	0%	550,992	4,883	.89%
TOTAL	318	6	1.89%	639,893	8,114	1.27%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENTS

5.01	1	0	0%	72	0	0%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	2	0	0%	16	0	0%
5.05	2	0	0%	16,030	0	0%
5.06	0	0	0%	0	0	0%
5.07	0	0	0%	0	0	0%
5.08	7	1	14.29%	1,200	300	25.00%
5.09	2	1	50.00%	2,011	11	.5%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	0	0	0%	0	0	0%
5.40	0	0	0%	0	0	0%
TOTAL	14	2	14.29%	19,329	311	1.61%

6.00 MILLING PRODUCTS

6.01	40	1	2.50%	11,003	5	.05%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	0	0	0%
6.04	0	0	0%	0	0	0%
6.05	19	2	.53%	390	17	4.36%
6.06	0	0	0%	4,592	191	4.16%
6.07	9	2	22.22%	1,006	26	2.58%
6.08	105	4	3.81%	29,616	175	.59%
6.09	6	1	16.67%	215	33	15.35%
6.40	14	0	0%	509	0	0%
TOTAL	193	10	5.18%	47,331	447	.94%

7.00 PRODUCE

7.01	334	24	7.19%	121,083	2,971	2.45%
7.02	78	3	3.85%	87,210	5,630	6.46%
7.03	247	4	1.62%	38,428	846	2.20%
7.04	270	20	7.41%	16,288	726	4.46%
7.05	0	0	0%	0	0	0%
7.06	0	0	0%	0	0	0%
7.40	5	4	80.00%	48	36	75.00%
7.50	542	13	2.40%	40,699	917	2.25%
TOTAL	1,476	68	4.61%	303,756	11,126	3.66%

8.00 OTHER FOOD PREPARATIONS

8.01	7	0	0%	60,742	0	0%
8.02	17	0	0%	8,429	0	0%
8.03	40	1	2.50%	4,558	1,388	30.45%
8.04	0	0	0%	0	0	0%
8.05	30	0	0%	969	0	0%
8.06	70	0	0%	6,341	0	0%
8.07	0	0	0%	0	0	0%
8.08	0	0	0%	0	0	0%
8.09	5	0	0%	6,458	0	0%
8.10	52	0	0%	2,678	0	0%
8.11	57	2	3.51%	7,461	2,028	27.18%
8.12	80	0	0%	4,891	0	0%
8.40	189	12	6.35%	11,098	1,517	13.67%
TOTAL	547	15	2.74%	113,621	4,933	4.34%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>9.00 BEVERAGES</u>						
9.01	0	0	0%	0	0	0%
9.02	1	1	100.00%	10	10	100.00%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	86	11	12.79%	272,815	491	.18%
9.06	6	0	0%	900	0	0%
9.07	0	0	0%	0	0	0%
9.08	1	0	0%	10	0	0%
9.09	1	0	0%	72	0	0%
9.10	39	8	20.51%	42,610	25,845	60.65%
9.11	22	1	4.55%	3,803	138	3.63%
9.12	0	0	0%	0	0	0%
9.13	1	0	0%	13	0	0%
9.14	0	0	0%	0	0	0%
9.15	0	0	0%	0	0	0%
9.16	0	0	0%	0	0	0%
9.17	5	0	0%	4,500	0	0%
9.18	5	1	20.00%	638	24	3.76%
9.40	0	0	0%	0	0	0%
TOTAL	167	22	13.17%	325,371	26,508	8.15%

10.00 PHARMACY PRODUCTS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	0	0	0%	0	0	0%
10.05	1	0	0%	800	0	0%
10.06	0	0	0%	0	0	0%
10.07	1	1	100.00%	8	8	100.00%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	6	0	0%	600	0	0%
10.12	121	2	1.65%	46,483	347	.75%
10.13	63	10	15.87%	10,377	1,177	11.34%
10.14	0	0	0%	0	0	0%
10.15	0	0	0%	0	0	0%
10.16	0	0	0%	0	0	0%
10.17	12	0	0%	264	0	0%
10.18	2	0	0%	300	0	0%
10.19	0	0	0%	0	0	0%
10.40	2	0	0%	22	0	0%
TOTAL	208	13	6.25%	58,856	1,532	2.60%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
<u>11.00 GARDEN, FARM, PET SUPPLIES</u>						
11.01	1	0	0%	75	0	0%
11.02	1	0	0%	19	0	0%
11.03	12	1	8.33%	1,601	17	1.06%
11.04	1	0	0%	1,910	0	0%
11.05	0	0	0%	0	0	0%
11.06	20	0	0%	1,203	0	0%
11.07	11	2	18.18%	377	287	76.13%
11.08	60	10	16.67%	14,590	2,326	15.94%
11.09	11	0	0%	405	0	0%
11.10	36	1	2.78%	1,464	600	40.99%
11.11	180	19	10.56%	19,972	1,167	5.84%
11.12	308	3	.97%	64,446	32,937	.11%
11.13	49	4	8.16%	1,269	59	4.65%
11.14	132	3	2.27%	5,036	18	.36%
11.15	141	0	0%	50,461	0	0%
11.16	135	0	0%	26,440	0	0%
11.17	7	1	14.29%	2,935	17	.58%
11.18	0	0	0%	0	0	0%
11.40	45	1	2.22%	20,325	9	.04%
TOTAL	1,150	45	3.91%	212,528	37,437	17.62%

12.00 HARDWARE, AND BUILDING MATERIALS

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.01	80	4	5.00%	11,884	78	.66%
12.02	18	0	0%	408	0	0%
12.03	0	0	0%	0	0	0%
12.04	3	0	0%	10	0	0%
12.05	17	0	0%	5,035	0	0%
12.06	0	0	0%	0	0	0%
12.07	23	8	34.78%	4,939	3,189	64.57%
12.08	0	0	0%	0	0	0%
12.09	8	6	75.00%	1,027	887	86.37%
12.10	64	5	7.81%	3,794	131	3.45%
12.11	6	1	16.67%	197	10	5.08%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	1	1	100.00%	750	750	100.00%
12.16	0	0	0%	0	0	0%
12.17	12	9	75.00%	287	271	94.43%
12.18	0	0	0%	0	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	3	0	0%	8,740	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	34	15	44.12%	1,865	192	10.29%
TOTAL	269	49	18.22%	39,836	5,508	13.83%
13.00 PAINT AND ALLIED PRODUCTS						
13.01	233	24	10.30%	18,250	1,331	7.29%
13.02	81	4	4.94%	7,901	1,350	17.09%
13.03	18	0	0%	1,500	0	0%
13.04	1	0	0%	723	0	0%
13.05	3	0	0%	134	0	0%
13.06	7	0	0%	120	0	0%
13.07	0	0	0%	0	0	0%
13.08	50	5	10.00%	23,733	21,056	88.72%
13.09	46	1	2.17%	10,112	2,268	22.43%
13.10	0	0	0%	0	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	6	0	0%	100	0	0%
13.14	0	0	0%	0	0	0%
13.15	7	0	0%	78	0	0%
13.40	28	0	0%	1,486	0	0%
TOTAL	480	34	7.08%	64,137	26,005	40.55%
14.00 MAINTENANCE SUPPLIES						
14.01	0	0	0%	0	0	0%
14.02	0	0	0%	0	0	0%
14.03	62	9	14.52%	31,850	3,549	11.14%
14.04	24	3	12.50%	2,270	93	4.10%
14.05	32	10	31.25%	2,734	1,639	59.95%
14.06	101	21	20.79%	22,505	3,065	13.62%
14.07	11	3	27.27%	1,796	360	20.04%
14.08	0	0	0%	0	0	0%
14.09	0	0	0%	0	0	0%
14.10	0	0	0%	0	0	0%
14.11	1	0	0%	45	0	0%
14.12	8	1	12.50%	412	20	4.85%
14.13	40	4	10.00%	9,223	3,712	40.25%
14.40	107	30	28.04%	21,595	1,900	8.80%
TOTAL	386	81	20.98%	92,430	14,338	15.51%
15.00 PAPER PRODUCTS						
15.01	3	0	0%	100	0	0%
15.02	6	0	0%	13,639	0	0%
15.03	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	0	0	0%	0	0	0%
15.05	0	0	0%	0	0	0%
15.06	7	1	14.29%	812	200	24.63%
15.07	12	0	0%	78	0	0%
15.08	0	0	0%	0	0	0%
15.09	0	0	0%	0	0	0%
15.10	5	2	40.00%	874	74	8.47%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	32	1	3.13%	6,526	240	3.68%
15.14	0	0	0%	0	0	0%
15.15	0	0	0%	0	0	0%
15.40	2	0	0%	92	0	0%
TOTAL	67	4	5.97%	22,121	514	2.32%
16.00 TEXTILE PRODUCTS						
16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	0	0	0%	0	0	0%
16.06	1	0	0%	10	0	0%
16.07	12	0	0%	1,345	0	0%
16.08	0	0	0%	0	0	0%
16.09	0	0	0%	0	0	0%
16.10	189	19	10.05%	6,420	471	7.34%
16.11	5	0	0%	60	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	2	2	100.00%	121	121	100.00%
16.15	0	0	0%	0	0	0%
16.16	0	0	0%	0	0	0%
16.17	3	3	100.00%	139	139	100.00%
16.40	6	3	50.00%	657	379	57.69%
TOTAL	218	27	12.39%	8,752	1,082	12.36%
17.00 MISCELLANEOUS						
17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	68	0	0%	6,615	0	0%
17.04	0	0	0%	0	0	0%
17.05	0	0	0%	0	0	0%
17.06	0	0	0%	0	0	0%
17.07	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.08	0	0	0%	0	0	0%
17.09	0	0	0%	0	0	0%
17.10	31	1	3.23%	1,486	6	.40%
17.11	12	0	0%	5,030	0	0%
17.12	0	0	0%	0	0	0%
17.13	1	0	0%	132	0	0%
17.14	0	0	0%	0	0	0%
17.15	0	0	0%	0	0	0%
17.16	4	0	0%	1,127	0	0%
17.17	41	1	2.44%	8,941	246	2.75%
17.18	3	2	66.67%	2,151	15	.70%
17.19	0	0	0%	0	0	0%
17.20	0	0	0%	0	0	0%
17.21	0	0	0%	0	0	0%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	6	0	0%	27,472	0	0%
17.40	2	0	0%	19	0	0%
TOTAL	168	4	2.38%	52,973	267	.50%
ALL CATEGORIES						
TOTAL	10,168	640	6.29%	2,683,039	229,369	8.55%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS & FLAVORINGS						
1.01	7	0	0%	635	0	0%
1.02	138	0	0%	49,220	0	0%
1.03	199	4	2.01%	27,603	913	3.30%
1.04	12	0	0%	689	0	0%
1.05	1	1	100.00%	21	21	100.00%
1.06	372	120	32.26%	33,798	765	2.26%
1.07	15	1	6.66%	745	5	.67%
1.08	46	1	2.17%	2,285	15	.66%
1.09	21	0	0%	768	0	0%
1.10	0	0	0%	0	0	0%
1.11	9	0	0%	3,388	0	0%
1.12	95	0	0%	10,156	0	0%
1.13	33	0	0%	1,990	0	0%
1.14	35	0	0%	1,196	0	0%
1.15	1	0	0%	160	0	0%
1.16	0	0	0%	0	0	0%
1.40	86	1	1.16%	13,513	24	.18%
TOTAL	1,070	128	11.96%	146,167	1,743	1.19%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	26	0	0%	1,070	0	0%
2.03	46	0	0%	45,834	0	0%
2.04	157	5	3.18%	13,332	58	.44%
2.05	69	4	5.80%	2,607	46	1.76%
2.06	2	1	50.00%	162	4	2.47%
2.07	18	8	44.44%	208	84	40.38%
2.08	0	0	0%	0	0	0%
2.09	0	0	0%	0	0	0%
2.10	0	0	0%	0	0	0%
2.11	3	0	0%	262	0	0%
2.12	2	0	0%	31	0	0%
2.13	225	11	4.89%	18,955	1,479	7.80%
2.14	1	0	0%	14	0	0%
2.15	0	0	0%	0	0	0%
2.16	14	0	0%	764	0	0%
2.17	0	0	0%	0	0	0%
2.40	0	0	0%	0	0	0%
2.50	896	48	5.36%	178,103	4,291	2.41%
TOTAL	1,459	77	5.28%	261,342	5,962	2.28%
3.00 BAKERY GOODS - CANNED, FRESH, OR FROZEN						
3.01	122	17	13.93%	1,833	66	3.60%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	0	0	0%	0	0	0%
3.03	6	1	16.67%	88	10	11.36%
3.04	8	0	0%	95	0	0%
3.05	0	0	0%	0	0	0%
3.06	74	1	1.35%	1,741	7	.40%
3.07	0	0	0%	0	0	0%
3.08	1	0	0%	600	0	0%
3.09	7	0	0%	52	0	0%
3.10	24	0	0%	23,826	0	0%
3.11	44	1	2.27%	12,000	20	.16%
3.12	0	0	0%	0	0	0%
3.13	0	0	0%	0	0	0%
3.40	2	2	100.00%	110	110	100.00%
3.50	1,684	138	8.19%	128,953	1,758	1.36%
TOTAL	1,972	160	8.11%	169,298	1,971	1.13%

4.00 MEAT, FISH, POULTRY

4.01	9	0	0%	633	0	0%
4.02	59	17	28.81%	16,589	8,048	48.51%
4.03	5	4	80.00%	66	26	39.39%
4.04	0	0	0%	2,523	7	.27%
4.05	0	0	0%	8,045	24	.29%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	1,071	83	7.74%
4.08	0	0	0%	0	0	0%
4.09	0	0	0%	4,073	397	9.74%
4.10	0	0	0%	14,677	1,029	7.01%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	512	179	34.96%
4.13	0	0	0%	0	0	0%
4.14	0	0	0%	455	92	20.21%
4.40	0	0	0%	30	19	63.33%
4.50	0	0	0%	534,629	4,158	.77%
TOTAL	73	21	28.76%	583,303	14,062	2.41%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENT

5.01	1	1	100.00%	21	21	100.00%
5.02	0	0	0%	0	0	0%
5.03	0	0	0%	0	0	0%
5.04	0	0	0%	0	0	0%
5.05	6	0	0%	600	0	0%
5.06	0	0	0%	0	0	0%
5.07	10	0	0%	546	0	0%
5.08	31	1	3.22%	4,112	27	.65%
5.09	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	0	0	0%	0	0	0%
5.40	0	0	0%	0	0	0%
TOTAL	48	2	4.16%	5,279	48	.90%
6.00 MILLING PRODUCTS						
6.01	55	0	0%	3,039	0	0%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	0	0	0%
6.04	1	1	100.00%	10	10	100.00%
6.05	22	2	9.09%	4,890	35	.71%
6.06	0	0	0%	6,863	444	6.46%
6.07	0	0	0%	0	0	0%
6.08	179	12	6.70%	14,191	333	2.34%
6.09	0	0	0%	0	0	0%
6.40	1	0	0%	200	0	0%
TOTAL	258	15	5.81%	29,193	822	2.81%

7.00 PRODUCE

7.01	357	25	7.00%	73,095	1,115	1.52%
7.02	102	3	2.94%	43,861	15,401	35.11%
7.03	358	6	1.67%	57,875	210	.36%
7.04	178	27	15.16%	11,448	978	8.54%
7.05	0	0	0%	0	0	0%
7.06	0	0	0%	0	0	0%
7.40	0	0	0%	0	0	0%
7.50	365	14	3.83%	35,979	201	.55%
TOTAL	1,360	75	5.51%	222,258	17,905	8.05%

8.00 OTHER FOOD PREPARATIONS

8.01	0	0	0%	0	0	0%
8.02	0	0	0%	0	0	0%
8.03	3	0	0%	1,403	0	0%
8.04	6	2	33.33%	154	54	35.06%
8.05	23	0	0%	678	0	0%
8.06	6	0	0%	180	0	0%
8.07	0	0	0%	0	0	0%
8.08	1	0	0%	14	0	0%
8.09	5	0	0%	16,100	0	0%
8.10	0	0	0%	0	0	0%
8.11	74	1	1.35%	8,347	6	.07%
8.12	0	0	0%	0	0	0%
8.40	129	7	5.42%	4,141	122	2.94%
TOTAL	247	10	4.04%	31,017	182	.58%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	32	2	6.25%	5,495	517	9.40%
9.06	0	0	0%	0	0	0%
9.07	12	1	8.33%	2,500	96	3.84%
9.08	0	0	0%	0	0	0%
9.09	0	0	0%	0	0	0%
9.10	51	2	3.92%	14,793	2,208	14.92%
9.11	2	0	0%	45	0	0%
9.12	0	0	0%	0	0	0%
9.13	42	2	4.76%	6,517	16	.24%
9.14	6	0	0%	350	0	0%
9.15	0	0	0%	0	0	0%
9.16	1	0	0%	215	0	0%
9.17	23	1	4.34%	5,160	198	3.83%
9.18	0	0	0%	0	0	0%
9.40	0	0	0%	0	0	0%
TOTAL	169	8	4.73%	35,075	3,035	8.65%

10.00 PHARMACY PRODUCTS

10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	0	0	0%	0	0	0%
10.05	0	0	0%	0	0	0%
10.06	0	0	0%	0	0	0%
10.07	7	1	14.28%	2,284	384	16.81%
10.08	0	0	0%	0	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	1	1	100.00%	10	10	100.00%
10.12	37	4	10.81%	6,261	2,511	40.10%
10.13	23	6	26.03%	5,422	1,755	32.36%
10.14	0	0	0%	0	0	0%
10.15	4	0	0%	59	0	0%
10.16	0	0	0%	0	0	0%
10.17	0	0	0%	0	0	0%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	1	0	0%	300	0	0%
TOTAL	73	12	16.43%	14,336	4,660	32.50%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
11.00 GARDEN, FARM, PET SUPPLIES						
11.01	2	0	0%	1,860	0	0%
11.02	0	0	0%	0	0	0%
11.03	3	0	0%	1,164	0	0%
11.04	1	0	0%	30	0	0%
11.05	31	2	6.45%	3,990	222	5.56%
11.06	11	2	18.18%	459	14	3.05%
11.07	18	0	0%	4,174	0	0%
11.08	105	7	6.66%	16,366	687	4.19%
11.09	24	7	29.16%	5,435	160	2.94%
11.10	3	0	0%	85	0	0%
11.11	175	10	5.71%	12,603	408	3.23%
11.12	56	4	7.14%	2,983	101	3.38%
11.13	3	0	0%	308	0	0%
11.14	22	0	0%	375	0	0%
11.15	90	3	3.33%	13,966	48	.34%
11.16	40	1	2.50%	6,434	10	.15%
11.17	38	0	0%	3,240	0	0%
11.18	0	0	0%	0	0	0%
11.40	9	0	0%	11,378	0	0%
TOTAL	631	36	5.70%	84,850	1,650	1.94%

12.00 HARDWARE AND BUILDING MATERIALS

12.01	12	0	0%	345	0	0%
12.02	6	0	0%	581	0	0%
12.03	6	0	0%	120	0	0%
12.04	0	0	0%	0	0	0%
12.05	6	0	0%	195	0	0%
12.06	4	2	50.00%	200	48	24.00%
12.07	19	2	10.52%	7,196	30	.41%
12.08	24	3	1.25%	2,845	743	26.11%
12.09	4	2	50.00%	602	487	80.89%
12.10	34	0	0%	2,516	0	0%
12.11	0	0	0%	0	0	0%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	0	0	0%	0	0	0%
12.16	0	0	0%	0	0	0%
12.17	1	1	100.00%	3,400	3,400	100.00%
12.18	1	0	0%	150	0	0%
12.19	0	0	0%	0	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	13	1	7.69%	1,590	160	10.06%
TOTAL	130	11	8.46%	19,740	4,868	24.66%

13.00 PAINT AND ALLIED PRODUCTS

13.01	197	1	.50%	21,340	43	.20%
13.02	98	5	5.10%	27,103	4,980	18.37%
13.03	0	0	0%	0	0	0%
13.04	0	0	0%	0	0	0%
13.05	19	0	0%	950	0	0%
13.06	0	0	0%	0	0	0%
13.07	0	0	0%	0	0	0%
13.08	37	3	8.10%	2,770	118	4.26%
13.09	4	0	0%	600	0	0%
13.10	0	0	0%	0	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	0	0	0%	0	0	0%
13.14	0	0	0%	0	0	0%
13.15	0	0	0%	0	0	0%
13.40	17	1	5.88%	1,619	65	4.01%
TOTAL	372	10	2.68%	54,382	5,206	9.57%

14.00 MAINTENANCE SUPPLIES

14.01	0	0	0%	0	0	0%
14.02	0	0	0%	0	0	0%
14.03	2	1	50.00%	611	11	1.80%
14.04	2	2	100.00%	60	60	100.00%
14.05	19	1	5.26%	16	7	43.75%
14.06	116	5	4.31%	14,464	1,413	9.76%
14.07	0	0	0%	0	0	0%
14.08	0	0	0%	0	0	0%
14.09	0	0	0%	0	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	8	2	25.00%	421	95	22.56%
14.13	14	0	0%	756	0	0%
14.40	11	1	9.09%	702	180	25.64%
TOTAL	172	12	6.97%	17,030	1,766	10.36%

15.00 PAPER PRODUCTS

15.01	0	0	0%	0	0	0%
15.02	23	6	38.33%	11,768	9,271	78.78%
15.03	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	9	2	45.00%	2,973	960	32.29%
15.05	0	0	0%	0	0	0%
15.06	1	0	0%	300	0	0%
15.07	0	0	0%	0	0	0%
15.08	13	4	30.76%	4,029	1,363	33.82%
15.09	0	0	0%	0	0	0%
15.10	7	0	0%	21	0	0%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	44	6	13.64%	3,625	226	6.23%
15.14	0	0	0%	0	0	0%
15.15	0	0	0%	0	0	0%
15.40	5	0	0%	1,300	0	0%
TOTAL	102	18	17.64%	24,016	11,820	49.21%

16.00 TEXTILE PRODUCTS

16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	3	2	66.66%	85	44	51.76%
16.08	0	0	0%	0	0	0%
16.09	0	0	0%	0	0	0%
16.10	70	5	7.14%	2,310	632	27.35%
16.11	6	0	0%	72	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	1	0	0%	90	0	0%
16.15	0	0	0%	0	0	0%
16.16	0	0	0%	0	0	0%
16.17	0	0	0%	0	0	0%
16.40	1	1	100.00%	17	17	100.00%
TOTAL	81	8	9.87%	2,574	693	26.92%

17.00 MISCELLANEOUS

17.01	7	0	0%	900	0	0%
17.02	0	0	0%	0	0	0%
17.03	96	0	0%	5,039	0	0%
17.04	0	0	0%	0	0	0%
17.05	35	14	40.00%	1,285	851	66.27%
17.06	0	0	0%	0	0	0%
17.07	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.08	0	0	0%	0	0	0%
17.09	0	0	0%	0	0	0%
17.10	63	2	3.17%	6,502	31	.47%
17.11	13	2	15.38%	199	29	14.57%
17.12	3	0	0%	41	0	0%
17.13	0	0	0%	0	0	0%
17.14	1	0	0%	150	0	0%
17.15	0	0	0%	0	0	0%
17.16	23	4	17.39%	933	122	13.07%
17.17	30	0	0%	3,490	0	0%
17.18	0	0	0%	0	0	0%
17.19	2	0	0%	170	0	0%
17.20	0	0	0%	0	0	0%
17.21	0	0	0%	0	0	0%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	25	0	0%	8,131	0	0%
17.40	15	0	0%	203	0	0%
TOTAL	313	22	7.02%	27,043	1,033	3.81%
ALL CATEGORIES TOTAL	8,530	625	7.32%	1,726,903	77,426	4.48%

DIVISION OF MEASUREMENT STANDARDS  
QUANTITY CONTROL  
SUB-CATEGORIES AND % DEFECTIVE REPORT  
2ND QUARTER - APRIL, 1975 THRU JUNE 1975

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS & FLAVORINGS						
1.01	9	0	0%	1,350	0	0%
1.02	263	2	.76%	103,869	593	.57%
1.03	288	33	11.45%	74,440	866	1.16%
1.04	13	1	7.69%	883	58	6.57%
1.05	16	0	0%	391	0	0%
1.06	562	23	4.09%	36,585	2,389	6.53%
1.07	1	0	0%	500	0	0%
1.08	315	21	6.67%	48,895	10,685	21.85%
1.09	34	11	32.35%	8,014	206	2.57%
1.10	18	0	0%	1,725	0	0%
1.11	30	4	13.33%	2,008	583	29.03%
1.12	78	0	0%	12,647	0	0%
1.13	150	4	2.67%	175,664	50	.03%
1.14	292	22	7.53%	22,721	1,163	5.12%
1.15	0	0	0%	0	0	0%
1.16	0	0	0%	0	0	0%
1.40	307	20	6.51%	50,774	1,131	2.23%
TOTAL	2,376	141	5.93%	540,466	17,724	3.28%
2.00 DAIRY-TYPE PRODUCTS						
2.01	0	0	0%	0	0	0%
2.02	102	6	5.88%	14,729	704	4.78%
2.03	134	4	2.99%	14,723	186	1.26%
2.04	349	9	2.58%	119,168	391	.33%
2.05	239	14	5.86%	11,516	1,068	9.27%
2.06	12	2	16.67%	2,132	25	1.17%
2.07	145	8	5.52%	11,655	201	1.72%
2.08	0	0	0%	0	0	0%
2.09	10	1	10.00%	2,235	298	13.33%
2.10	14	3	21.43%	23,780	23,263	97.63%
2.11	4	1	25.00%	1,797	1,123	62.49%
2.12	9	1	11.11%	991	13	1.31%
2.13	938	50	5.33%	136,170	4,215	3.10%
2.14	14	0	0%	514	0	0%
2.15	5	1	20.00%	138	10	7.25%
2.16	1	0	0%	22	0	0%
2.17	71	0	0%	1,454	0	0%
2.40	21	0	0%	3,731	0	0%
2.50	2,435	129	5.30%	578,656	30,803	5.32%
TOTAL	4,503	229	5.09%	923,381	62,300	6.75%
3.00 BAKERY GOODS - CANNED, FRESH, OR FROZEN						
3.01	778	76	9.77%	33,219	957	2.88%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	4	1	25.00%	1,509	9	.60%
3.03	9	6	66.67%	4,300	1,859	43.23%
3.04	35	1	2.86%	1,168	51	4.37%
3.05	19	1	5.26%	3,295	2,968	90.08%
3.06	289	26	9.00%	12,556	1,756	13.99%
3.07	1	1	100.00%	16	16	100.00%
3.08	56	1	1.79%	1,148	6	.52%
3.09	5	0	0%	175	0	0%
3.10	89	1	1.12%	8,594	10	.12%
3.11	87	7	8.05%	21,099	319	1.51%
3.12	0	0	0%	0	0	0%
3.13	0	0	0%	0	0	0%
3.40	82	1	1.22%	1,009	13	1.29%
3.50	5,476	256	4.67%	364,439	9,782	2.68%
TOTAL	6,930	378	5.45%	452,527	17,746	3.92%

4.00 MEAT, FISH, POULTRY

4.01	127	0	0%	19,024	0	0%
4.02	194	17	8.76%	81,632	6,684	8.19%
4.03	24	5	20.83%	2,665	491	18.42%
4.04	0	0	0%	3,901	149	3.82%
4.05	0	0	0%	16,722	127	.76%
4.06	0	0	0%	443	43	9.71%
4.07	0	0	0%	2,314	1,143	49.39%
4.08	0	0	0%	49	40	81.63%
4.09	0	0	0%	14,293	470	3.29%
4.10	0	0	0%	69,645	2,923	4.20%
4.11	0	0	0%	234	144	61.54%
4.12	0	0	0%	3,501	506	14.45%
4.13	0	0	0%	1,480	0	0%
4.14	0	0	0%	378	29	7.67%
4.40	0	0	0%	53,797	274	.51%
4.50	0	0	0%	1,880,903	69,195	3.68%
TOTAL	345	22	6.38%	2,150,981	82,218	3.82%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENT

5.01	3	1	33.33%	618	244	39.48%
5.02	0	0	0%	0	0	0%
5.03	3	0	0%	550	0	0%
5.04	12	0	0%	2,657	0	0%
5.05	7	0	0%	1,050	0	0%
5.06	0	0	0%	0	0	0%
5.07	16	0	0%	789	0	0%
5.08	161	3	1.86%	27,887	488	1.75%
5.09	10	0	0%	5,350	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	85	0	0%	5,456	1	.02%
5.40	171	6	3.51%	25,449	819	3.22%
TOTAL	468	10	2.14%	69,806	1,552	2.22%

6.00 MILLING PRODUCTS

6.01	204	3	1.47%	7,230	26	.36%
6.02	14	2	14.29%	260	8	3.08%
6.03	1	0	0%	1,692	157	9.28%
6.04	0	0	0%	2	2	100.00%
6.05	93	2	2.15%	7,050	109	1.55%
6.06	0	0	0%	66,192	7,074	10.69%
6.07	82	7	8.54%	1,658	237	14.29%
6.08	482	43	8.92%	58,673	8,564	14.60%
6.09	96	10	10.42%	17,229	2,360	13.70%
6.40	276	14	5.07%	3,758	111	2.95%
TOTAL	1,248	81	6.49%	163,744	18,648	11.39%

7.00 PRODUCE

7.01	857	29	3.38%	86,305	4,093	4.74%
7.02	345	12	3.48%	33,354	898	2.69%
7.03	237	2	.84%	38,129	13	.03%
7.04	757	69	9.11%	83,590	5,480	6.56%
7.05	51	1	1.96%	4,572	15	.33%
7.06	7	0	0%	240	0	0%
7.40	34	0	0%	1,844	0	0%
7.50	2,617	87	3.32%	321,258	5,748	1.79%
TOTAL	4,905	200	4.08%	569,292	16,247	2.85%

8.00 OTHER FOOD PREPARATIONS

8.01	50	4	8.00%	59,996	14,764	24.61%
8.02	9	1	11.11%	933	2	.21%
8.03	15	0	0%	557	0	0%
8.04	17	0	0%	2,700	0	0%
8.05	9	1	11.11%	157	11	7.01%
8.06	26	0	0%	1,031	0	0%
8.07	48	0	0%	1,560	0	0%
8.08	6	0	0%	900	0	0%
8.09	68	9	13.24%	140,874	50,689	35.98%
8.10	59	0	0%	1,745	0	0%
8.11	153	4	2.61%	13,265	62	.47%
8.12	28	2	7.14%	2,990	25	.84%
8.40	503	54	10.74%	57,386	34,849	60.73%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
TOTAL	991	75	7.57%	284,094	100,402	35.34%
9.00 BEVERAGES						
9.01	0	0	0%	0	0	0%
9.02	0	0	0%	0	0	0%
9.03	0	0	0%	0	0	0%
9.04	0	0	0%	0	0	0%
9.05	183	26	14.21%	92,924	13,087	14.08%
9.06	24	8	33.33%	6,633	729	10.99%
9.07	39	4	10.26%	2,448	471	19.24%
9.08	0	0	0%	0	0	0%
9.09	23	0	0%	3,300	0	0%
9.10	67	6	8.96%	25,913	3,944	15.22%
9.11	14	0	0%	5,338	0	0%
9.12	4	0	0%	67	0	0%
9.13	22	0	0%	185	0	0%
9.14	1	0	0%	4	0	0%
9.15	0	0	0%	0	0	0%
9.16	7	0	0%	383	0	0%
9.17	3	0	0%	45	0	0%
9.18	40	0	0%	8,741	0	0%
9.40	3	3	100.00%	693	693	100.00%
TOTAL	430	47	10.93%	146,674	18,924	12.90%
10.00 PHARMACY PRODUCTS						
10.01	0	0	0%	0	0	0%
10.02	6	0	0%	92	0	0%
10.03	1	0	0%	115	0	0%
10.04	19	0	0%	908	0	0%
10.05	2	2	100.00%	21	21	100.00%
10.06	0	0	0%	0	0	0%
10.07	30	2	6.67%	6,916	18	.26%
10.08	11	0	0%	1,054	0	0%
10.09	0	0	0%	0	0	0%
10.10	0	0	0%	0	0	0%
10.11	16	0	0%	5,100	0	0%
10.12	245	40	16.33%	50,553	16,089	31.83%
10.13	176	20	11.36%	53,165	12,511	23.53%
10.14	0	0	0%	0	0	0%
10.15	5	0	0%	31	0	0%
10.16	0	0	0%	0	0	0%
10.17	8	1	12.50%	388	155	39.95%
10.18	0	0	0%	0	0	0%
10.19	0	0	0%	0	0	0%
10.40	22	1	4.55%	2,458	148	6.02%
TOTAL	541	66	12.20%	120,801	28,942	23.96%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
11.00 GARDEN, FARM, PET SUPPLIES						
11.01	7	1	14.29%	265	25	9.43%
11.02	4	3	75.00%	44	32	72.73%
11.03	9	2	22.22%	5,232	4,325	82.66%
11.04	0	0	0%	0	0	0%
11.05	107	7	6.54%	8,610	215	2.50%
11.06	152	2	1.32%	8,073	510	6.32%
11.07	87	5	5.75%	3,702	61	1.65%
11.08	633	19	3.00%	93,817	2,379	2.54%
11.09	197	23	11.68%	32,457	2,077	6.40%
11.10	39	6	15.38%	4,241	416	9.81%
11.11	180	19	10.56%	17,701	618	3.49%
11.12	251	20	7.97%	154,247	2,903	1.88%
11.13	83	2	2.41%	25,375	1,563	6.16%
11.14	57	2	3.51%	3,998	221	5.53%
11.15	329	2	.61%	34,456	89	.26%
11.16	74	2	2.70%	6,837	25	.37%
11.17	44	5	11.36%	10,716	632	5.90%
11.18	9	5	55.56%	172	92	53.49%
11.40	76	3	3.95%	6,674	138	2.07%
TOTAL	2,338	128	5.47%	416,617	16,321	3.92%
12.00 HARDWARE & BUILDING MATERIALS						
12.01	447	13	2.91%	77,251	33,746	43.68%
12.02	41	3	7.32%	5,646	1,566	27.74%
12.03	0	0	0%	0	0	0%
12.04	9	0	0%	132	0	0%
12.05	15	0	0%	665	0	0%
12.06	23	2	8.70%	2,027	438	21.61%
12.07	19	2	10.53%	2,077	72	3.43%
12.08	53	4	7.55%	2,732	167	6.11%
12.09	18	5	27.78%	1,238	278	22.46%
12.10	155	7	4.52%	16,281	1,191	7.32%
12.11	26	4	13.38%	7,999	2,443	30.54%
12.12	0	0	0%	0	0	0%
12.13	0	0	0%	0	0	0%
12.14	18	0	0%	1,801	0	0%
12.15	7	0	0%	935	0	0%
12.16	1	0	0%	24	0	0%
12.17	84	30	35.71%	27,892	21,841	78.31%
12.18	28	0	0%	6,702	0	0%
12.19	2	0	0%	200	0	0%
12.20	0	0	0%	0	0	0%
12.21	5	0	0%	683	0	0%
12.22	7	0	0%	439	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.40	60	3	5.00%	5,925	64	1.08%
TOTAL	1,018	73	7.17%	160,939	61,806	38.47%
<u>13.00 PAINT &amp; ALLIED PRODUCTS</u>						
13.01	588	9	1.53%	35,694	635	1.78%
13.02	225	4	1.78%	17,486	193	1.10%
13.03	73	0	0%	6,425	0	0%
13.04	17	0	0%	2,171	0	0%
13.05	96	0	0%	9,350	0	0%
13.06	20	2	10.00%	2,907	407	14.00%
13.07	2	0	0%	15	0	0%
13.08	109	17	15.60%	29,476	12,467	42.30%
13.09	63	4	6.35%	5,448	143	2.62%
13.10	9	0	0%	950	0	0%
13.11	0	0	0%	0	0	0%
13.12	0	0	0%	0	0	0%
13.13	0	0	0%	0	0	0%
13.14	0	0	0%	0	0	0%
13.15	6	0	0%	1,030	0	0%
13.40	179	2	1.12%	35,817	25	.07%
TOTAL	1,387	38	2.74%	146,769	13,870	9.45%
<u>14.00 MAINTENANCE SUPPLIES</u>						
14.01	14	0	0%	1,460	0	0%
14.02	1	0	0%	20	0	0%
14.03	131	23	17.56%	6,034	1,965	32.57%
14.04	12	2	16.67%	492	52	10.57%
14.05	16	3	18.75%	898	114	12.69%
14.06	362	16	4.42%	37,547	10,588	28.20%
14.07	19	5	26.32%	2,829	738	26.09%
14.08	0	0	0%	0	0	0%
14.09	20	0	0%	297	0	0%
14.10	1	0	0%	265	0	0%
14.11	16	0	0%	8,144	0	0%
14.12	13	0	0%	1,350	0	0%
14.13	225	13	5.78%	14,390	1,243	8.64%
14.40	30	2	6.67%	10,574	2,280	21.56%
TOTAL	860	64	7.44%	84,300	16,980	20.14%
<u>15.00 PAPER PRODUCTS</u>						
15.01	0	0	0%	0	0	0%
15.02	83	25	30.12%	226,146	219,699	97.15%
15.03	1	0	0%	15	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.04	3	2	66.67%	105	90	85.71%
15.05	0	0	0%	0	0	0%
15.06	4	0	0%	1,195	0	0%
15.07	0	0	0%	0	0	0%
15.08	40	2	5.00%	7,751	21	.27%
15.09	0	0	0%	0	0	0%
15.10	11	5	45.45%	38,285	29,276	76.47%
15.11	0	0	0%	0	0	0%
15.12	0	0	0%	0	0	0%
15.13	28	3	10.71%	16,606	987	5.94%
15.14	0	0	0%	0	0	0%
15.15	0	0	0%	0	0	0%
15.40	9	0	0%	220	0	0%
TOTAL	179	37	20.67%	290,323	250,073	86.14%
<u>16.00 TEXTILE PRODUCTS</u>						
16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	0	0	0%	0	0	0%
16.04	0	0	0%	0	0	0%
16.05	3	1	33.33%	60	6	10.00%
16.06	0	0	0%	0	0	0%
16.07	0	0	0%	0	0	0%
16.08	0	0	0%	0	0	0%
16.09	0	0	0%	0	0	0%
16.10	304	17	5.59%	19,343	9,285	48.00%
16.11	0	0	0%	0	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	1	0	0%	300	0	0%
16.15	3	3	100.00%	33	33	100.00%
16.16	0	0	0%	0	0	0%
16.17	0	0	0%	0	0	0%
16.40	3	3	100.00%	396	396	100.00%
TOTAL	314	24	7.64%	20,132	9,720	48.28%
<u>17.00 MISCELLANEOUS</u>						
17.01	0	0	0%	0	0	0%
17.02	0	0	0%	0	0	0%
17.03	60	6	10.00%	719	11	1.53%
17.04	3	0	0%	1,800	0	0%
17.05	0	0	0%	0	0	0%
17.06	0	0	0%	0	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.07	6	0	0%	46	0	0%
17.08	0	0	0%	0	0	0%
17.09	2	0	0%	8,523	0	0%
17.10	152	9	5.92%	8,971	692	7.71%
17.11	75	5	6.67%	21,508	6,015	27.97%
17.12	23	5	21.74%	1,188	237	19.95%
17.13	0	0	0%	0	0	0%
17.14	0	0	0%	0	0	0%
17.15	78	4	5.13%	3,301	1,050	31.81%
17.16	97	30	30.93%	6,324	1,722	27.23%
17.17	27	6	22.22%	50,778	20,604	40.58%
17.18	2	1	50.00%	408	108	26.47%
17.19	3	0	0%	128	0	0%
17.20	0	0	0%	0	0	0%
17.21	1	1	100.00%	217	217	100.00%
17.22	0	0	0%	0	0	0%
17.23	0	0	0%	0	0	0%
17.24	96	1	1.04%	63,368	3	.004%
17.40	70	0	0%	2,370	0	0%
TOTAL	695	68	9.78%	169,649	30,659	18.07%

ALL CATEGORIES

TOTAL	29,528	1,681	5.69%	6,710,495	764,132	11.39%
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DIVISION OF MEASUREMENT STANDARDS  
QUANTITY CONTROL  
SUB-CATEGORIES AND % DEFECTIVE REPORT  
3RD QUARTER - JULY THRU-SEPTEMBER 1975

CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
1.00 CONFECTIONS & FLAVORINGS						
1.01	7	0	0%	89	0	0%
1.02	66	1	1.52%	12,870	2	.02%
1.03	55	2	3.64%	6,925	5	.07%
1.04	0	0	0%	0	0	0%
1.05	12	5	41.67%	849	19	2.24%
1.06	369	11	2.98%	54,228	13,481	24.86%
1.07	12	1	8.33%	306	53	17.32%
1.08	315	7	2.22%	17,011	1,245	7.32%
1.09	0	0	0%	0	0	0%
1.10	10	0	0%	2,000	0	0%
1.11	19	0	0%	2,695	0	0%
1.12	14	3	21.43%	584	67	11.47%
1.13	27	1	3.70%	1,150	9	.78%
1.14	202	14	6.93%	7,302	549	7.52%
1.15	4	1	25.00%	502	18	3.59%
1.16	20	0	0%	187	0	0%
1.40	20	2	10.00%	18,398	1,571	8.54%
TOTAL	1,152	48	4.17%	125,096	17,019	13.60%
2.00 DAIRY-TYPE PRODUCTS						
2.01	1	0	0%	30	0	0%
2.02	86	6	6.98%	27,721	208	.75%
2.03	116	7	6.03%	37,522	1,497	3.99%
2.04	347	17	4.90%	11,262	232	2.06%
2.05	621	21	3.38%	76,401	1,204	1.58%
2.06	2	1	50.00%	34	9	26.47%
2.07	139	8	5.76%	75,098	21,749	28.96%
2.08	49	0	0%	2,043	0	0%
2.09	4	0	0%	1,756	0	0%
2.10	0	0	0%	0	0	0%
2.11	11	0	0%	2,662	0	0%
2.12	21	0	0%	3,300	0	0%
2.13	798	42	5.26%	113,622	8,895	7.83%
2.14	28	7	25.00%	24,277	1,276	5.26%
2.15	6	3	50.00%	123	49	39.84%
2.16	1	1	100.00%	7	7	100.00%
2.17	15	0	0%	867	0	0%
2.40	3	1	33.33%	6,216	1,638	26.35%
2.50	1,522	30	1.97%	388,320	22,460	5.78%
TOTAL	3,770	144	3.82%	771,261	59,224	7.68%
3.00 BAKERY GOODS - CANNED, FRESH, OR FROZEN						
3.01	690	52	7.54%	50,694	943	1.86%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
3.02	8	0	0%	137	0	0%
3.03	12	6	50.00%	25,263	684	2.71%
3.04	83	10	12.05%	3,012	69	2.29%
3.05	30	0	0%	725	0	0%
3.06	210	9	4.29%	40,422	121	.30%
3.07	23	0	0%	3,319	0	0%
3.08	44	0	0%	3,274	0	0%
3.09	99	4	4.04%	9,219	76	.82%
3.10	54	1	1.85%	14,166	15	.11%
3.11	142	11	7.75%	37,167	1,004	2.70%
3.12	87	10	11.49%	333	42	12.61%
3.13	0	0	0%	0	0	0%
3.40	20	5	25.00%	191	41	21.47%
3.50	4,018	175	4.36%	298,709	10,133	3.39%
TOTAL	5,520	283	5.13%	486,631	13,128	2.70%

4.00 MEAT, FISH, POULTRY

4.01	112	2	1.79%	35,028	215	.61%
4.02	86	9	10.47%	7,874	667	8.47%
4.03	17	5	29.41%	1,733	423	24.41%
4.04	0	0	0%	8,537	2,851	39.40%
4.05	0	0	0%	31,217	205	.66%
4.06	0	0	0%	0	0	0%
4.07	0	0	0%	621	252	40.60%
4.08	0	0	0%	0	0	0%
4.09	0	0	0%	17,774	1,484	8.35%
4.10	0	0	0%	79,404	3,818	4.81%
4.11	0	0	0%	0	0	0%
4.12	0	0	0%	1,653	622	37.63%
4.13	0	0	0%	3,827	37	.97%
4.14	0	0	0%	206	0	0%
4.40	0	0	0%	25,894	875	3.38%
4.50	0	0	0%	1,742,845	17,845	1.02%
TOTAL	215	16	7.44%	1,956,613	29,294	1.50%

5.00 COOKING OILS, SALAD DRESSINGS, CONDIMENT

5.01	2	0	0%	300	0	0%
5.02	4	0	0%	1,944	0	0%
5.03	0	0	0%	0	0	0%
5.04	9	0	0%	3,642	0	0%
5.05	1	0	0%	90	0	0%
5.06	3	0	0%	1,002	0	0%
5.07	0	0	0%	0	0	0%
5.08	16	0	0%	1,272	0	0%
5.09	1	0	0%	400	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
5.10	4	0	0%	600	0	0%
5.40	26	0	0%	2,922	0	0%
TOTAL	66	0	0%	12,172	0	0%
6.00 MILLING PRODUCTS						
6.01	79	3	3.80%	4,378	45	1.03%
6.02	0	0	0%	0	0	0%
6.03	0	0	0%	0	0	0%
6.04	0	0	0%	0	0	0%
6.05	29	2	6.90%	3,540	29	.82%
6.06	0	0	0%	9,686	907	9.36%
6.07	31	1	3.23%	684	5	.73%
6.08	449	27	6.01%	43,422	4,930	11.35%
6.09	42	6	14.29%	925	180	19.46%
6.40	34	12	35.29%	791	237	29.96%
TOTAL	664	51	7.68%	63,426	6,333	9.99%

7.00 PRODUCE

7.01	346	17	4.91%	35,770	2,236	6.25%
7.02	549	35	6.36%	504,381	108,843	21.58%
7.03	70	0	0%	5,358	0	0%
7.04	536	30	5.60%	386,824	5,876	1.52%
7.05	7	0	0%	243	0	0%
7.06	22	2	9.09%	550	19	3.45%
7.40	22	0	0%	681	0	0%
7.50	1,741	64	3.68%	266,404	4,798	1.80%
TOTAL	3,293	148	4.49%	1,200,211	121,772	10.15%

8.00 OTHER FOOD PREPARATIONS

8.01	0	0	0%	0	0	0%
8.02	3	0	0%	47	0	0%
8.03	47	1	2.13%	756	78	10.32%
8.04	0	0	0%	0	0	0%
8.05	64	1	1.56%	4,111	12	.29%
8.06	87	0	0%	24,976	0	0%
8.07	176	1	.57%	41,912	13	.03%
8.08	0	0	0%	0	0	0%
8.09	194	29	14.95%	654,392	51,247	7.83%
8.10	13	0	0%	304	0	0%
8.11	42	1	2.38%	8,470	7,776	91.80%
8.12	6	0	0%	297	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
8.40	526	20	3.80%	76,842	1,210	1.57%
TOTAL	1,158	53	4.58%	812,107	60,336	7.43%

9.00 BEVERAGES

9.01	23	0	0%	24,500	0	0%
9.02	1	1	100.00%	10	10	100.00%
9.03	0	0	0%	0	0	0%
9.04	7	7	100.00%	128	128	100.00%
9.05	430	16	3.72%	1,063,496	56,736	5.33%
9.06	106	6	5.66%	456,367	94,132	20.63%
9.07	42	9	21.43%	25,552	4,485	17.55%
9.08	26	0	0%	2,675	0	0%
9.09	85	5	5.88%	463,971	1,370	.30%
9.10	60	9	15.00%	94,221	23,587	25.03%
9.11	5	0	0%	11,405	1	.01%
9.12	2	0	0%	36	0	0%
9.13	23	5	21.74%	1,212	317	26.16%
9.14	75	6	8.00%	12,559	47	.37%
9.15	8	0	0%	234	0	0%
9.16	28	0	0%	5,916	0	0%
9.17	14	2	14.29%	4,211	1,490	35.38%
9.18	36	2	5.56%	3,394	182	5.36%
9.40	4	0	0%	600	0	0%
TOTAL	975	68	6.97%	2,170,488	182,485	8.41%

10.00 PHARMACY PRODUCTS

10.01	0	0	0%	0	0	0%
10.02	0	0	0%	0	0	0%
10.03	0	0	0%	0	0	0%
10.04	5	0	0%	69	0	0%
10.05	14	0	0%	5,400	0	0%
10.06	3	0	0%	52	0	0%
10.07	34	2	5.85%	5,749	32	.56%
10.08	174	31	17.82%	137,891	72,910	52.88%
10.09	107	0	0%	2,389	0	0%
10.10	10	0	0%	200	0	0%
10.11	29	0	0%	9,653	0	0%
10.12	190	17	8.95%	68,904	20,372	29.57%
10.13	74	5	6.76%	61,744	19,152	31.02%
10.14	0	0	0%	0	0	0%
10.15	0	0	0%	0	0	0%
10.16	0	0	0%	0	0	0%
10.17	0	0	0%	0	0	0%
10.18	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
10.19	0	0	0%	0	0	0%
10.40	50	2	4.00%	1,258	124	9.86%
TOTAL	690	57	8.26%	293,349	112,590	38.38%

11.00 GARDEN, FARM, PET SUPPLIES

11.01	25	1	4.00%	15,182	6	.04%
11.02	9	0	0%	180	0	0%
11.03	2	0	0%	300	0	0%
11.04	0	0	0%	0	0	0%
11.05	37	0	0%	507	0	0%
11.06	33	8	24.24%	2,847	646	22.69%
11.07	31	2	6.45%	5,865	18	.31%
11.08	249	22	8.84%	26,868	8,934	33.25%
11.09	92	25	27.17%	10,762	2,407	22.37%
11.10	108	20	18.52%	3,688	869	23.56%
11.11	102	15	14.71%	11,137	833	7.48%
11.12	253	5	1.98%	59,375	260	.44%
11.13	64	11	17.19%	5,336	381	7.14%
11.14	76	2	2.63%	5,046	122	2.42%
11.15	16	1	6.25%	1,349	120	8.90%
11.16	62	0	0%	3,406	0	0%
11.17	64	0	0%	4,496	0	0%
11.18	4	0	0%	4	0	0%
11.40	35	2	5.71%	17,223	52	.30%
TOTAL	1,262	114	9.03%	173,571	14,648	8.44%

12.00 HARDWARE & BUILDING MATERIALS

12.01	66	0	0%	1,082	0	0%
12.02	42	0	0%	822	0	0%
12.03	5	1	20.00%	3,997	3,072	76.86%
12.04	0	0	0%	0	0	0%
12.05	0	0	0%	0	0	0%
12.06	7	0	0%	1,037	0	0%
12.07	27	3	11.11%	1,624	59	3.63%
12.08	12	0	0%	862	0	0%
12.09	7	0	0%	1,550	0	0%
12.10	107	5	4.67%	10,085	450	4.46%
12.11	10	0	0%	1,115	0	0%
12.12	12	0	0%	1,175	0	0%
12.13	0	0	0%	0	0	0%
12.14	0	0	0%	0	0	0%
12.15	1	1	100.00%	68	68	100.00%
12.16	12	1	8.33%	2,171	344	15.85%
12.17	68	23	33.82%	6,050	2,045	33.80%
12.18	0	0	0%	0	0	0%



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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
12.19	1	0	0%	8,000	0	0%
12.20	0	0	0%	0	0	0%
12.21	0	0	0%	0	0	0%
12.22	5	0	0%	390	0	0%
12.40	25	4	16.00%	1,450	51	3.52%
TOTAL	407	38	9.34%	41,478	6,089	14.68%
13.00 PAINT & ALLIED PRODUCTS						
13.01	456	3	.66%	30,453	706	2.32%
13.02	189	0	0%	11,119	0	0%
13.03	10	0	0%	200	0	0%
13.04	36	0	0%	2,025	0	0%
13.05	32	0	0%	2,975	0	0%
13.06	3	0	0%	200	0	0%
13.07	0	0	0%	0	0	0%
13.08	115	4	3.48%	13,861	1,594	11.50%
13.09	115	9	7.83%	27,162	11,971	44.07%
13.10	0	0	0%	0	0	0%
13.11	3	0	0%	750	0	0%
13.12	0	0	0%	0	0	0%
13.13	3	0	0%	600	0	0%
13.14	6	0	0%	1,000	0	0%
13.15	1	0	0%	35	0	0%
13.40	158	12	7.59%	27,797	1,664	5.99%
TOTAL	1,127	28	2.48%	118,177	15,935	13.48%
14.00 MAINTENANCE SUPPLIES						
14.01	12	0	0%	890	0	0%
14.02	1	0	0%	17	0	0%
14.03	137	18	13.14%	94,503	56,657	59.95%
14.04	42	0	0%	12,776	0	0%
14.05	7	1	14.29%	181	6	3.31%
14.06	162	4	2.47%	6,984	115	1.65%
14.07	0	0	0%	0	0	0%
14.08	0	0	0%	0	0	0%
14.09	0	0	0%	0	0	0%
14.10	0	0	0%	0	0	0%
14.11	0	0	0%	0	0	0%
14.12	1	0	0%	60	0	0%
14.13	92	1	1.07%	3,012	8	.27%
14.40	97	4	4.12%	13,909	124	.89%
TOTAL	551	28	5.08%	132,337	56,910	43.00%
15.00 PAPER PRODUCTS						
15.01	2	1	50.00%	111	11	9.91%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
15.02	85	22	25.88%	89,613	63,677	71.06%
15.03	1	0	0%	42	0	0%
15.04	35	6	17.14%	3,105	1,273	41.00%
15.05	0	0	0%	0	0	0%
15.06	1	0	0%	150	0	0%
15.07	0	0	0%	0	0	0%
15.08	25	0	0%	445	0	0%
15.09	0	0	0%	0	0	0%
15.10	6	2	33.33%	454	129	28.41%
15.11	2	2	100.00%	26,024	26,024	100.00%
15.12	0	0	0%	0	0	0%
15.13	75	8	10.67%	33,815	395	1.17%
15.14	0	0	0%	0	0	0%
15.15	2	0	0%	25	0	0%
15.40	34	15	44.12%	2,733	1,499	54.85%
TOTAL	268	56	20.90%	156,517	93,003	59.42%
16.00 TEXTILE PRODUCTS						
16.01	0	0	0%	0	0	0%
16.02	0	0	0%	0	0	0%
16.03	4	1	25.00%	614	64	10.42%
16.04	0	0	0%	0	0	0%
16.05	0	0	0%	0	0	0%
16.06	0	0	0%	0	0	0%
16.07	0	0	0%	0	0	0%
16.08	0	0	0%	0	0	0%
16.09	2	1	50.00%	176	116	65.91%
16.10	188	7	3.72%	3,468	105	3.03%
16.11	8	0	0%	97	0	0%
16.12	0	0	0%	0	0	0%
16.13	0	0	0%	0	0	0%
16.14	25	9	36.00%	1,863	221	11.86%
16.15	2	1	50.00%	817	260	31.82%
16.16	0	0	0%	0	0	0%
16.17	0	0	0%	0	0	0%
16.40	17	1	5.88%	701	64	9.13%
TOTAL	246	20	8.13%	7,736	830	10.73%
17.00 MISCELLANEOUS						
17.01	1	0	0%	30	0	0%
17.02	0	0	0%	0	0	0%
17.03	53	0	0%	4,172	0	0%
17.04	0	0	0%	0	0	0%

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CODE	TOTAL LOTS	LOTS REJECTED	% LOTS REJECTED	TOTAL PACKAGES	PACKAGES REJECTED	% PACKAGES REJECTED
17.05	47	0	0%	2,748	0	0%
17.06	0	0	0%	0	0	0%
17.07	12	0	0%	75	0	0%
17.08	0	0	0%	0	0	0%
17.09	24	0	0%	185	0	0%
17.10	21	0	0%	1,918	0	0%
17.11	24	0	0%	3,106	0	0%
17.12	9	1	11.11%	138	8	5.80%
17.13	1	0	0%	55	0	0%
17.14	0	0	0%	0	0	0%
17.15	5	3	60.00%	2,152	1,107	51.44%
17.16	167	57	34.13%	5,729	2,981	52.03%
17.17	9	0	0%	9,356	0	0%
17.18	6	1	16.67%	538	60	11.15%
17.19	3	2	66.67%	39	24	61.54%
17.20	2	0	0%	30	0	0%
17.21	3	0	0%	185	0	0%
17.22	1	0	0%	24	0	0%
17.23	0	0	0%	0	0	0%
17.24	27	1	3.70%	4,139	324	7.83%
17.40	31	4	12.90%	3,687	312	8.46%
TOTAL	446	69	15.47%	38,306	4,816	12.57%
ALL CATEGORIES						
TOTAL	21,810	1,221	5.60%	8,559,476	794,417	9.28%

STATISTICS COMPILED FROM  
DIVISION OF MEASUREMENT  
STANDARDS, QUANTITY CONTROL  
SUB-CATEGORIES AND % DEFECTIVE REPORT  
(JULY 1972 - SEPTEMBER 1975)

Chicken fresh and frozen - 4.12 (code)

July 1972	June 1973	24,159	3,246	13.43
July 1973	June 1974	21,829	7,945	36.40
July 1974	Dec. 1974	19,561	8,774	44.85
Jan. 1975	Sept. 1975	7,609	2,448	32.17